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THE DIRECT PRIMARY AND PARTY STRUCTURE: A STUDY OF STATE LEGISLATIVE NOMINATIONS

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Some analysts blame the direct primary for the supposedly parlous state of the American party system; others assert that nominating procedures do not affect parties at all. The literature abounds with more or less judicious, and conflicting, estimates of the consequences of the primary mode of nomination. In fact, our present knowledge provides little basis for confident appraisal of the effects of the direct primary. This article reports an attack on a small part of the problem, viz., state legislative nominations in two-party states, by explicit methods of analysis, whose use may both make possible a minor substantive contribution as well as demonstrate the appalling amount of work necessary for a provisional solution of even the smallest aspect of the broad problem.[1]

To cope with questions about the consequences of particular institutional arrangements requires both a working theory and a means of observation to determine whether it fits the facts. For lack of a better concept, the problem of the effects of the primary method of nomination may be regarded as a special case of the broader question of the nature of the interaction between formal and informal organization. An old and basic proposition of political science warns that formal institutional arrangements may cloak radically different informal patterns of behavior. Thus, the actual position of the British monarch diverges from the nominal.

Recognition of the divergence between actual and formally prescribed patterns of practice opened lines of observation that have yielded indispensable insights. The fruitfulness of inquiries based on the assumption of disparities between nominal and actual, however, has also led to an exaggeration of the insignificance of formal arrangements. In some circles the view prevails that informal organization governs all and that formal organization deserves no attention. The familiar debate over this matter deserves only an irreverent disregard because it usually concerns the wrong question. Common knowledge testifies to the fact that political practices do not invariably follow formal prescriptions. On the other hand, the contention that formal arrangements are without effect on behavior patterns is like arguing that the rule book has no bearing on the way the ball game is played. The real problem is not one of either-or; it is one of identifying differentiations among types of situations in which varying sorts of interactions occur between formal arrangements and informal organization.[2]

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[1] It ought to be recorded that several assistants did most of the work. Layman Allen prepared an extensive survey of competition for legislative office in Missouri while Stanley D. Hopper and Frank Munger made other contributory analyses. I am also indebted to several colleagues for most helpful criticisms of an earlier draft.

The direct primary nomination procedure may be regarded, at least in the type of situation with which we are concerned, as a formal procedure superimposed over a pre-existing informal organization. In its bearing on the informal organization of parties and of power-seeking activity, direct primary legislation is largely permissive rather than prescriptive. It permits pre-existing cliques and hierarchies to utilize a new procedure; it also opens the door to activity by new groups, new aspirants to power. It changes the rules of the game and creates within the field of political action opportunities for types of political behavior different from those prevailing before its adoption. The extent to which those opportunities are utilized—and thus modify or displace pre-existing behavior patterns—represents the extent of the consequences of the "formal procedure" in altering "informal behavior."

In this pattern of interaction between formal and informal both sides of the equation are variables. The formal procedure of nomination itself may be by convention or primary, with gradations in between. The informal political organization itself may possess a wide variety of characteristics. Obviously the extent of the effects of formal procedure will depend not only on its own character but also in part on the nature of the informal structure of power and patterns of action into which it is installed. For that reason a primary procedure may have radically different consequences, within similar time periods, in relation to a tightly knit party hierarchy than in relation to an amorphous politics with a sketchy power structure.

While hypotheses about the effects of the use of the direct primary nomination procedure may be formulated readily enough, their systematic testing against experience raises difficult problems of observation and analysis. So many variables are involved in even the simplest political process that their disentanglement to create a basis for reflection on the significance of particular factors in the whole complex often taxes both energy and ingenuity. Although voting returns report only limited observations of the electoral process, they are readily available for many jurisdictions over a long period of time. Nominations of state legislators, since there are many of them, provide data in sufficient quantity to permit the differentiation of nominations under many types of circumstances and the identification of variables associated with particular types of behavior.

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[2] All this argument avoids the genetic question—which came first, the formal or informal organization. I suggest that the sequential relationship is not invariably the same.

I

A first step toward an attack on the question of the relation between formal procedure and informal organization consists of an analysis of the utilization of the direct primary in state legislative nominations. That analysis will identify features of party behavior that exist under the primary system and raise the question whether they can be attributed to that system itself. In this description of the primary system its workings may be checked against a model that probably corresponds roughly to the broad expectations of early advocates of the primary. According to this model more or less spontaneous candidacies in the primaries would permit "the people," or more particularly the mass of the party, to choose between candidates. Thus, competition within each party would precede competition between candidates of opposing parties at the general election. In a perfectly balanced competitive situation each legislative district of a state would be characterized not only by competition at the general election but also by rivalry in each of the party primaries.[3]

A basic departure from the crude model consists in the variation among legislative districts in the degree to which they approach an even competition between parties. Although the form of the distribution varies from state to state and from time to time, districts range from those whose electorate is overwhelmingly committed to one party, through those that are closely divided, to those that are in high degree attached to the other party. Moreover, at individual elections the movement of districts from party to party tends to be largely in one direction. If the general shift of sentiment is to the Republicans, they capture districts that were Democratic by a narrow margin at the preceding elec-

[3] Part I of this analysis largely follows Julius Turner's study of congressional primaries, "Primary Elections as the Alternative to Party Competition in 'Safe' Districts." *The Journal of Politics*, Vol. 15, pp. 197–210 (May, 1953).

tion, but they lose few if any districts they already held. Or a similar selective movement occurs in the other direction. Table I, which relates the 1946 election of the Missouri House of Representatives to that of 1948, illustrates this observation. In 1948 the Democrats lost no district they had carried in 1946; they gained mainly seats that Republicans had won by a relatively narrow margin in 1946.

This variation in the competitiveness of legislative districts, which is partially shown in Table I, turns out to be most useful in analysis of the workings of the primary. Instead of there being a couple of Republicans who vie for their party's nomination and a pair of Democrats who contend for the right to oppose the Republican nominee, it turns out that a great many nominations go by default. The extent to which a party's nominations are contested in the primary by two or more aspirants apparently depends in large measure on the prospects for victory for the nominee in the general election. Uncontested nominations for legislative posts are almost the rule in those districts in which a party's cause seems hopeless, while a large proportion of nominations will be contested in relatively sure districts. A type situation is described by the graphs in Figure 1 which relate the proportions of nominations contested by two or more candidates in primaries for the Missouri House of Representatives to the division of the vote in the subsequent general election. The division of the district vote at the general election itself may be regarded, post facto, as a rough measure of expectations about the outcome of elections.[4]

TABLE I. PARTY FORTUNES IN LEGISLATIVE RACES IN RELATION TO VOTE AT PRECEDING ELECTION: REPUBLICAN AND DEMOCRATIC VICTORIES IN 1948 MISSOURI HOUSE ELECTIONS RELATED TO DISTRIBUTION OF LEGISLATIVE DISTRICTS ACCORDING TO DEMOCRATIC PERCENTAGE OF 1946 POPULAR VOTE

Per cent Democratic, 1946	Number of seats 1946 (1)	Democratic, 1948		Republican, 1948	
		Number (2)	Per cent (2) of (1)	Number (3)	Per cent (3) of (1)
0	14	2	14.3	12	85.7
10–29.9	13	0	0.0	13	100.0
30–34.9	8	1	12.5	7	87.5
35–39.9	21	7	33.3	14	66.7
40–44.9	20	11	55.0	9	45.0
45–49.9	23	19	82.6	4	17.4
50–99.9	39	39	100.0	0	0.0
100	16	16	100.0	0	0.0

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[4] The combination of five primaries in Figure 1 smoothes the curve but the funda-

Although the increase in the incidence of primary competition as the prospects for party victory improve, demonstrated by Figure 1, probably recurs from state to state, the proportion of all nominations contested varies from state to state with a variety of factors. Table II, with its data on Indiana's 1948 primary, indicates that in Indiana, as in Missouri, the greatest propensity to compete for a party's nominations occurs in those districts in which the nominees have the greatest assurance of victory in the general election. The table also reveals a considerably higher incidence of competition—with general election strength held constant—in Indiana than in Missouri. That difference doubtless

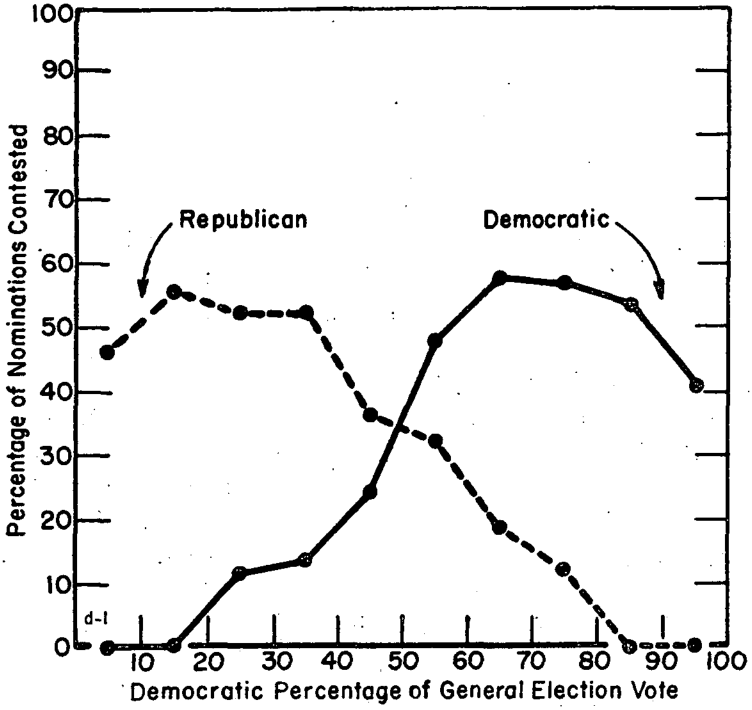

FIG. 1. Primary Competition and the Prospects for General Election Victory: Relation between Proportion of Nominations Contested and Percentage of General Election Vote Polled by Republican and Democratic Nominees for Missouri House of Representatives, 1942–1950.

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damental relation shown appears at each election. Throughout, the combination of primaries usually smoothes a curve or pictures a more regular set of relations than appears from the data of a single primary. This effect is most marked in the cells of very small numbers. Enlargement of the sample by the cumulation of data on several primaries would probably iron out most of the irregularities that appear in cells of small numbers in some of the tables that follow. In the choice of data for presentation for illustrative purposes somewhat irregular tabulations were often used lest an exaggerated impression of the uniformity of the correlations be conveyed.

TABLE II. PRIMARY CONTESTS IN RELATION TO GENERAL ELECTION VOTE: PROPORTIONS OF DEMOCRATIC AND REPUBLICAN LEGISLATIVE NOMINATIONS CONTESTED, INDIANA, 1948 IN RELATION TO 1948 GENERAL ELECTION VOTE IN LEGISLATIVE DISTRICTS

Nominees' General Election Percentage	Democratic		Republican	
	Number of Nominations[a]	Per cent Contested	Number of Nominations	Per cent Contested
Under 40	3	0.0	9	44.4
40–44.9	14	7.1	21	61.9
45–49.9	18	33.3	30	76.7
50–54.9	30	76.7	18	66.7
55–59.9	20	85.0	13	84.6
60 and over	11	81.8	8	87.5

[a] Included are those nominations made by party committee rather than by primary. Such nominations are in effect classified in the percentage computations as uncontested.

points to basic differences in the political structures of the two states, one of which is that a larger proportion of the Indiana districts is closely contested. Table II incidentally suggests some of the limits of the actual vote as a measure of the expectation of victory; note that the Republicans competed for nominations to a large proportion of those seats which they lost by a small margin, perhaps in part a reflection of the rosiness of Republican expectations before the 1948 upset.[5]

The high degree of association between primary competition and the prospect for general election victory points to another deviation from our crude model. Instead of lively competition in all primaries of both parties, the prediction now would be that simultaneous contests for both nominations would occur chiefly in those districts regarded as more or less evenly balanced between the two parties at the general election. In districts thought to be relatively safe for either party, competition for nominations would tend to be restricted to the primary of the dominant party. These expectations are on the whole fulfilled by the data of Table III relating to the Indiana primaries of 1948 and 1950.[6] While the distribution in the table indicates that factors other than the estimate of the chances for victory may induce competition, save for an erratic exception consisting of a cell of small numbers simultaneous competition in both primaries tended to be most common in relatively

Commonly

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[5] For relevant comments on Indiana experience, see Charles S. Hyneman, "Tenure and Turnover of the Indiana General Assembly," this REVIEW, Vol. 32, pp. 51–67, 311–31 (Feb., April, 1938).

[6] The Missouri primaries of 1948 and 1950 parallel this expectation more closely than do the primaries analyzed in Table III.

TABLE III. PRIMARY CONTESTS ACCORDING TO PARTY PRIMARY IN WHICH THEY OCCURRED: CONTESTS FOR NOMINATIONS FOR INDIANA HOUSE OF REPRESENTATIVES, SINGLE-MEMBER DISTRICTS, 1948–1950, ACCORDING TO GENERAL ELECTION VOTE FOR NOMINEES

Democratic Percentage General Election	Districts	Per Cent of Nominations Contested in			
		Both Primaries	Neither Primary	Democratic Only	Republican Only
0	5	0.0	0.0	0.0	100.0
30–34.9	5	0.0	0.0	0.0	100.0
35–39.9	11	9.1	36.4	0.0	54.5
40–44.0	29	24.1	31.0	3.4	41.4
45–49.9	33	15.1	33.3	6.1	45.4
50–54.9	30	36.6	23.3	26.7	13.3
55–59.9	13	15.4	23.1	53.8	7.7
60–64	4	75.0	0.0	0.0	25.0
100	2	0.0	0.0	100.0	0.0

close districts.[7] The data of Table III clearly point to the tendency for primary competition in safe districts to be limited to the primaries of the dominant party.[8]

While the preceding analyses account for a considerable part of the variation among districts in competition for party nomination, they also leave some of the variation unexplained. Factors other than prospects for victory also induce or discourage competition in primaries. The supposition that "one good term deserves another" suggests a test of whether primaries in which incumbents seek renomination are less likely to be contested than are those in which no incumbent is in the race, with prospects for party victory held constant. A test of the hypothesis appears in Figure 2 which records an analysis of the primaries of both parties in Missouri for the years 1946, 1948, and 1950. A less extensive collection of Ohio data is analyzed in Table IV. The data of Figure 2 and Table IV indicate that, at least in the safe districts as we have defined them, primaries in which incumbents seek renomination are less likely to involve competition than are those in which no incumbent is running. The Missouri data, however, reveal a higher rate of competition for incumbents in the lower ranges of party strength than in primaries involving no incumbents in districts similar in party strength at the general election. Districts in which the incumbents' party polled but 30 to 40 per cent of the general election vote obviously underwent a wide swing in popular vote from the preceding election and probably differed in some important respects from those in which the party had no incumbent but polled the same small vote at the general election. A better measure of expectation of party victory in the two types of districts would probably remove the discrepancy from the data in these lower ranges.[9]

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[7] Some of the irregularities of the distribution in Table III would probably be ironed out if there were a better measure of expectation of general election outcome than the vote itself.

[8] If the argument may be anticipated, the pattern here points toward our main problem. A situation in which competition prevails in both primaries and the general election may represent equilibrium most difficult to maintain. Does such a state of affairs represent so unstable an equilibrium that over the long run it tends to be destroyed by a movement of decision and voter interest to one or the other party primaries?

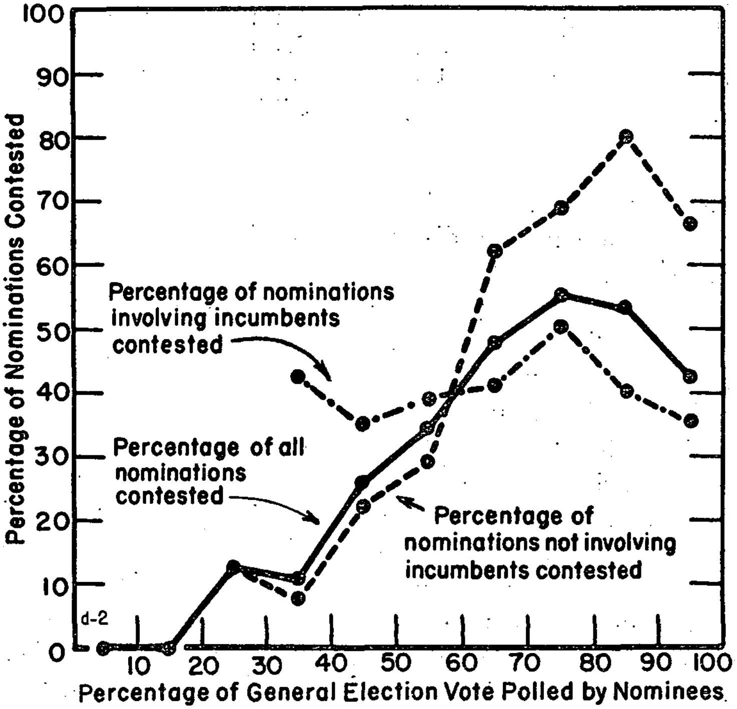

FIG. 2. Incumbents and Primary Competition: Competition in Primaries Involving Incumbents and in Primaries Involving No Incumbents with Comparable Prospects of General Election Victory, Missouri House of Representatives, 1946–1950.

While a larger sample would probably reveal more regular relations than those in Table IV, examination of the data for other states suggests

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[9] The percentage in the incumbent curve in Figure 2 for the general election range of 30 to 40 per cent is based on only seven cases. All were in Republican primaries and six fell in 1948 when all the contests occurred. The chances are that the rout of the Democrats in 1946 resulted in the candidacy of Republican incumbents from traditionally Democratic districts in the 1948 primaries when the bleak Democratic prospects gave rise to rosy estimates of the Republican chances of holding districts they had won in 1946. See the analysis of the 1946–1948 shift in Table I.

TABLE IV. INCUMBENCY AND COMPETITION FOR LEGISLATIVE NOMINATIONS: PROPORTION OF OHIO HOUSE REPUBLICAN PRIMARIES IN SINGLE MEMBER DISTRICTS CONTESTED IN 1948, WHEN INCUMBENTS INVOLVED AND NOT INVOLVED

Republican Percentage General Election, 1948	Primary Involving			
	Incumbents		No Incumbents	
	Nominations	Per cent Contested	Nominations	Per cent Contested
30–39	2	100.0	3	0.0
40–49	10	20.0	5	80.0
50–59	19	47.4	6	83.3
60–69	6	50.0	0	0.0
70–79	2	0.0	0	0.0
100	20	40.0	3	66.6
Total	59	40.7	17	64.7

caution in the ascription of uniform significance to incumbency in relation to primary competition. The extent to which incumbents seek renomination and the customary public attitudes about the candidacies of incumbents no doubt differ from state to state and even from locality to locality. In any case in the data presented "incumbency" probably masks a more inclusive type of relation between the aspirant for nomination and his constituency and perhaps between him and other potential candidates. There may be a common denominator or denominators between uncontested incumbents and uncontested non-incumbents.

While several factors associated with primary competition have been identified other variables doubtless exist. Demographic characteristics of districts may be more or less conducive to primary competition, and, indeed, to political competition generally. Rural districts may, for example, be less given to political commotion than highly urbanized ones.[10] A test of this supposition appears in Table V. That table compares rates of competition in urban and rural districts in Missouri primaries involving no incumbents, and thereby excludes from the comparison differences associated with incumbency. A sharp difference may be seen to exist in the proportions of such primaries contested in districts under 50 per cent urban and in those over 50 per cent urban, with the more placid politics in the rural districts.

A telescoped table such as Table V, with its broad categories, is rightly suspect. A further test of the ruralism-urbanism relation is provided by

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[10] On this point, see Key, "Partisanship and County Office: The Case of Ohio," this Review, Vol. 47, pp. 525–32 (June, 1953); *A Primer of Statistics for Political Scientists* (New York, 1954), Ch. 5.

TABLE V. URBANISM AND CONTESTS IN PRIMARIES INVOLVING NO INCUMBENTS: DEMOCRATIC PRIMARIES TO NOMINATE FOR MISSOURI HOUSE OF REPRESENTATIVES, 1948

Democratic Percentage in General Election	Nominations in Districts				Total	
	Under 50% Urban		Over 50% Urban			
	Number	% Contested	Number	% Contested	Number	% Contested
Under 50	33	3.0	7	28.5	40	7.5
Over 50	28	17.8	25	56.0	53	35.8
Total	61	9.8	32	50.0	93	22.6

the more detailed breakdown for the Ohio Republican and Democratic primaries of 1948 which appears in Table VI. That table exhibits some irregularities which would probably disappear by the analysis of a larger number of cases, but generally, within similar ranges of party strength, a higher incidence of primary competition occurs in the more urbanized districts.[11] A lingering doubt remains about the nature of the

TABLE VI. URBANISM AND CONTESTS IN PRIMARIES: CONTESTS IN OHIO REPUBLICAN AND DEMOCRATIC PRIMARIES TO NOMINATE FOR STATE HOUSE OF REPRESENTATIVES, 1948, IN RELATION TO NOMINEES' STRENGTH IN GENERAL ELECTION AND TO URBANISM OF DISTRICT*

Nominees' General Election Percentage of District Vote	Nominations in Districts				Total	
	Under 50% Urban		Over 50% Urban			
	Number	Per cent Contested	Number	Per cent Contested	Number	Per cent Contested
25–29	2	0.0	0		2	0.0
30–39	8	25.0	8	50.0	16	37.5
40–49	26	15.4	66	66.7	92	52.2
50–59	26	40.6	67	73.1	93	68.8
60–69	8	50.0	7	42.9	15	46.7
70–74	2	0.0	0		2	0.0
100	21	33.3	4	75.0	25	40.0

* In counties electing two or more members at large, nominations were regarded as uncontested to the extent that the number of aspirants for nomination was less than twice the number of nominations to be made. In the computation of the percentage of the two-party general election vote for candidates in such counties a base was obtained by addition of the vote of a winning candidate to the vote of the highest losing candidate of the opposite party.

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[11] An element that may influence urban rates in Ohio is the practice of electing many legislators at large from the metropolitan counties. This practice seems to be, at least in such areas, conducive to a multiplicity of candidacies for nomination.

association between urbanism and competition. It seems clear that the relation between urban population percentage and propensity to compete is not linear.[12] Moreover, metropolitan political systems in which no competition occurs in primaries are common enough. The multiplicity of centers of power and of aspiration in highly urbanized areas may, however, require the application of greater effort, ingenuity, and resources to monopolize party position than in otherwise comparable but predominantly rural areas.[13]

A final question about the incidence of competition for nomination needs to be raised. The preceding analyses have compared different districts at one primary. The fact that electoral decision is actually pushed back in many instances to the uncontested majority primary may lead to the conclusion that many such districts rarely have genuine political competition, whereas in an earlier day in every district candidates of the parties regularly did battle in the general election. Perhaps what occurs is that with the decay of party institutions whose reason for being is to do battle every two years, competition tends to occur less frequently than the two-year election interval. When an incumbent retires, when an issue happens to divide the community, or when the body politic undergoes disturbance for one reason or another, a contest will develop in the primary. Such events do not occur with the regularity of elections. To test these notions the history of individual districts must be traced through several primaries. Figure 3 records an analysis of individual Missouri districts through the three Republican primaries of 1946, 1948, and 1950. Those districts were identified in which at least one contest occurred in the three primaries as well as those in which at least one "close" contest took place. On the assumption that the incidence of these conditions would vary with party strength, the districts were grouped according to their Republican percentage in the legislative race in the general election of 1948.

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[12] The absence of competition seems most noticeable at the extreme of ruralism. Thomas Page, in commenting on the low temperature of competition in rural Kansas districts, observes: "The cold statistics hint that a subtle, informal, and highly personal process of co-optation often goes on in the smallest legislative districts. This leaves no important role for the formal election but the registration of the previously implicit consent." See the suggestive analysis in his *Legislative Apportionment in Kansas* (Lawrence, Kansas, 1952), Ch. 4.

[13] These remarks make relevant an exception to the theoretical proposition about the fixation of political practices and structures by social and demographic characteristics. When one pores over data, such as that processed for this article, he sees, for example, pairs of metropolitan counties with fairly stable and radical differences in political practice. Such contrasts suggest that political practices, developed through the application of human effort and hardened by custom, may exist independently of demographic and social determinants.

When the districts are followed through these three primaries, as may be seen from Figure 3, a much higher proportion of the districts have primary contests in at least one of the primaries than in a single year. Yet the relation between party strength and the incidence of primary competition emerges even more sharply than in the earlier analyses. All this suggests that such factors as urbanism and incumbency may affect the frequency of primary competition but that in the long run the incidence of primary competition is a function chiefly of the prospects for victory in the general election.[14]

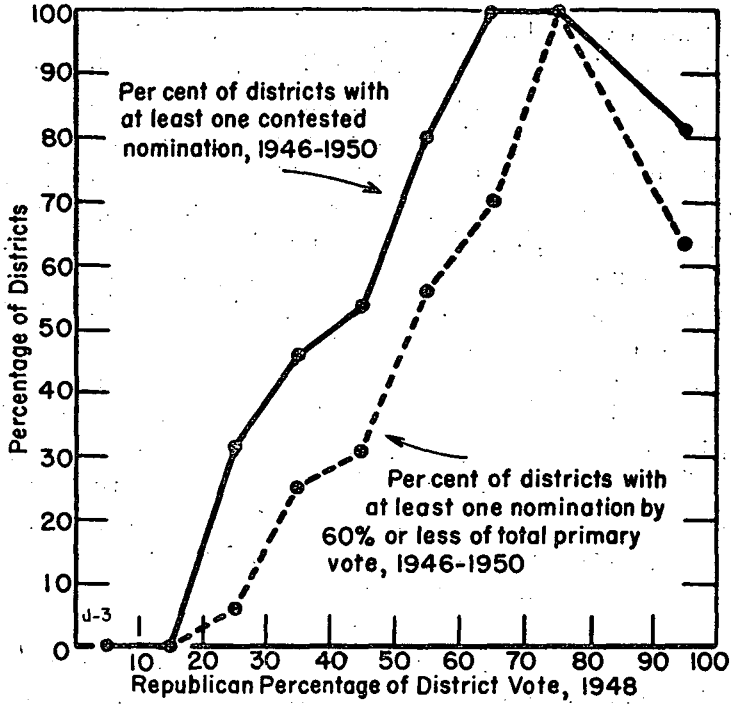

FIG. 3. Incidence of Competition in Three Successive Primaries: Proportion of Districts with Republican Nominations for Missouri House of Representatives Contested at Least Once in Primaries of 1946, 1948, and 1950, and Proportions Contested Closely at Least Once, Related to Republican Percentage of District General Election Vote, 1948.

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[14] No entirely satisfactory explanation suggests itself for the sharp fall-off in primary competition in the high ranges of party strength which remains even in the analysis reported in Figure 3, although ruralism seems to be relevant. In the 1948 Missouri general election 34.5 per cent of the completely rural House districts went without contest; 20.3 per cent of the other districts up to 50 per cent urban, and only 6.7 per cent of the districts over 50 per cent urban went without party competition. Of the seats Republicans won by default, 95.2 per cent were from districts under 50 per cent urban, while the comparable figure for the Democrats was 83.3. The horrid thought has been suggested that districts

If Figure 3 is viewed from a different angle, it throws light on another question. From Figure 1 and other similar analyses based on individual primaries the conclusion might follow that among the sure districts for each party there were many in which the "organization" was so strong that no aspirant dared challenge its man in the primary while in many others the "organization" was so weak that a primary fight occurred. An analysis of several primaries in sequence, as that of Figure 3, indicates that in most of the safe districts the "organization" either is not strong enough to prevent occasional serious challenge or makes use of the primary to settle its internal disputes. Attention to the time aspect of the matter, at least in this instance, modifies the inference of "organization" invincibility that might be drawn from the absence of contest in a considerable number of districts at a single primary.

II

The salient fact that emerges from all this is that competition for popular primary endorsement is concentrated in the districts relatively sure for one party. This association between primary competition and expectation of party victory appears to outweigh other factors that bear on the incidence of competition in the nominating process. The primary procedure, to a varying extent, transfers popular decision from the general election to the primary of the party that has the advantage in voting strength in the district.

These findings return us to the broad problem stated at the outset, viz., whether the primary, by changing the rules of the game, has had consequences for the informal organization of party and of power-seeking activity generally. Does the channeling of actual decision into the primary of the stronger party, by its impact election after election over a considerable period, alter the role and structure of the inner party cliques within the legislative districts; attract voter interest to the primary of the party with the advantage in the general election; tend to bring to the ranks of the stronger party the politically ambitious; and perhaps lead to the atrophy of the informal district leadership once vested with the function of putting forward minority candidates?

While the location of the variations in incidence of primary competition provides material for discussion of such questions, their systematic

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that go by default may be controlled by so effective an organization that the certainty of being counted out discourages competition both in the machine party primary and from the opposite party. Undoubtedly such situations are concealed within the aggregate figures, yet for this factor to take on importance for the main argument that follows it would have to be assumed that this type of machine control has become more widespread over the past half-century, an assumption contrary at least to common supposition.

testing encounters most difficult problems of analysis, quite apart from the problem of obtaining relevant data. If consequences for informal practices flow from the primary, the chances are that they accumulate so gradually that they would be beyond capture by field observation unless it were prolonged for a generation. Yet some inferences may be drawn from the elections data.

The "machine" is said to control nominations as always save that it acts through the primary rather than the convention. Even the data presented to this point compel modification of that view at least with respect to the types of nomination under examination. Consider in particular Figure 3, especially as it describes the incidence and nature of primary competition in districts where the expectation of general election victory for the party is high. If in most such districts a close primary contest occurs at frequent intervals, the position and role of the "machine" or inner party clique in the district must have been radically altered by the forces loosed and the opportunities created by the primary procedure. Such an interpretation rests on assumptions about the power of the inner clique in settling nominations in pre-primary days. Even, however, if it should be supposed that the "machine" wins every close primary contest, the fact remains that it is frequently seriously challenged. If appropriate pre-primary information could be had, the chances are that it would point to a trend toward a weakening of political leadership within the stronger party in the districts, and to at least a net decline in cohesion of the inner core of the stronger party, with, of course, local exceptions.

inferred effect of primary
on machine

If the attention of voters and the efforts of aspirants to leadership roles tend to be attracted to the primary of the majority party in legislative districts, the forecast would be that over time a larger proportion of districts would become "sure" districts. In a state in which districts were more or less normally distributed (i.e., a frequency distribution of districts according to party division of the general election popular vote assumed roughly the form of the normal curve of error), relatively more districts would become sure for both Democrats and Republicans. In a state with a skewed distribution of legislative districts, the proportion of sure districts would increase for whichever party had the advantage in safe districts at the outset. In either case the proportion of districts genuinely competitive between the parties would decline. The effects of these tendencies would be perceptible, of course, only in the absence of countervailing forces.

A test of these propositions appears in Figure 4, which compares the distribution of Missouri House districts according to the percentage division of the two-party vote in 1908, the first year of operation under the direct primary law, and in 1946, 1948, and 1950 combined. Observe that the distribution of districts became more widely dispersed between 1908 and 1950. At one end of the scale Republicans came to win, usually without contest, a block of seats; at the other end of the scale, the number of seats that went to the Democrats by default increased. The proportion of districts clustered about the 50-50 point declined. Whether or not the direct primary was the cause of it all, a point to be weighed shortly, a sharp change occurred in the district distribution in the period 1908–1950.

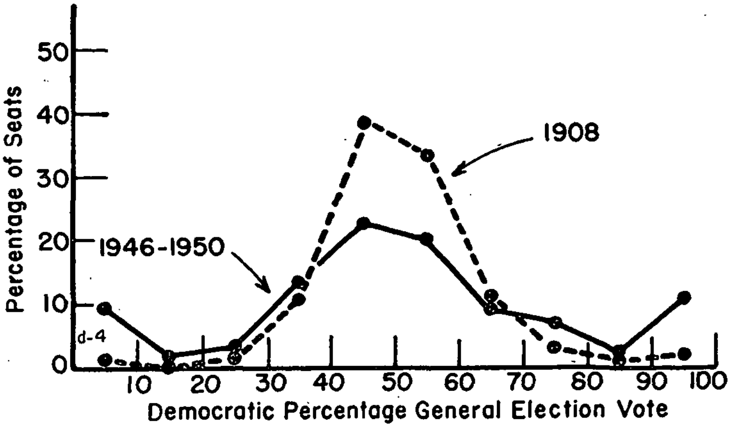

FIG. 4. Pre-Primary and Post-Primary Contrasts: Distribution of Missouri House Districts, 1908 and 1946–48–50 Combined, According to Percentage Division of District General Election Vote on Representatives.

A word needs to be said about the rationale for the comparison of two distributions so far separated in time. The assumption is that informal habits of political action—the activity of organizational cliques, the loyalty of electors to party symbols, and so forth—are altered only gradually, if at all, by such matters as primary procedures. Patterns of political action have a very considerable durability. If this is true, the effects of the direct primary procedure on political practice become visible only after a political generation or so, not after an election or two. It is, of course, perilous to assume that the two distributions at 1908 and 1946–50 represent observations of two points in a long-term, straight-line trend. Such examination as was made of the intervening period suggests that the change represented by Figure 4 is secular.[15]

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[15] The difference between the two Missouri distributions is accounted for in large measure by the growth in the number of seats uncontested at the general election. From 1908 to 1916 between 2 and 4 per cent of the House seats went by default at each election.

The broadened dispersion of Missouri districts between 1908 and 1948 shown in Figure 4 flows principally from the failure of parties to put forward candidates in some districts. Nevertheless, a check ought to be made to determine whether a tendency exists for voters to desert their party on local candidates in order, as the saying goes, "to have a voice in local affairs." Some voters thus might register in the dominant local party, participate in its primaries, vote for the local candidate in the general election, yet remain loyal to the state and national ticket of the opposite party. If such a tendency prevails, in weak Democratic districts the Democratic legislative candidate would run behind the presidential or gubernatorial candidate; in strong Democratic districts the Democratic legislative candidate would run ahead of the presidential or gubernatorial candidate. These disparities would presumably be most marked in states using the office-bloc ballot.

To test these questions the analysis of the 1948 Massachusetts primary in Table VII was made. No uniform tendency appears for the voters to behave according to the hypotheses stated. The Massachusetts data, however, may not adequately test the question, for the relations in the table undoubtedly are influenced by factors other than the two variables whose relationship is in question and the cases are few. A similar analysis of the 1948 Missouri election, in which the party-column ballot was used, revealed a closer matching of party division of the vote for governor and for legislator in those districts in which both parties had legislative nominees. The upshot seems to be that when there is a legislative candidate on the ballot, he is likely, on the average, to run about as strongly as the head of the ticket in the types of situations examined.

The inference follows, from the discussion of Table VII, that the type of broadening dispersion of legislative districts recorded in Figure 4 does not flow primarily from a movement of voters from party to party

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In 1918 a sharp rise in the proportion of uncontested seats occurred and then the proportion of seats won by default settled down to a new plateau between 5 and 10 per cent of the total. In 1938, another abrupt upturn in the percentage of uncontested seats took place—to a peak of slightly over 30 per cent—and again the level settled down to another plateau in the neighborhood of 20 per cent. Missouri maintained a fairly even state-wide two-party competition over the period. In other states, with wider swings in party strength, it is probable that the cyclical factor would manifest itself in changes in the proportions of seats uncontested, i.e., apart from any long term decay in party leadership the proportions of seats uncontested might rise with an abrupt short-term decline in the strength of one of the parties. Or a sharp rise in minority party strength might increase the proportions of seats contested. Examination of the records of such states might result in the identification of variables other than nominating procedures with a significant bearing on competition and such effects might obscure or offset those factors on which attention is centered here.

TABLE VII. RELATIONSHIP BETWEEN DEMOCRATIC PRESIDENTIAL VOTE AND VOTE FOR DEMOCRATIC LEGISLATIVE CANDIDATES IN MASSACHUSETTS SINGLE-MEMBER DISTRICTS, 1948

District's Democratic Presidential Percentage 1948	Number of Districts	Mean Democratic Percentage, Districts with Legislative Contests		Districts with No	
		Presidential Vote	Legislative Vote	Democratic Legislative Candidate	Republican Legislative Candidate
10–19	1			1	0
20–29	4			4	0
30–39	15	36.5	39.6	7	0
40–49	27	44.8	41.4	13	1
50–59	15	54.8	59.2	0	1
60–69	12	64.4	64.9	0	1
70–79	15	76.6	67.3	0	6
80–89	7	84.0	73.3[a]	0	6

[a] Only one district is included in this cell.

but more from the atrophy of party leadership in the districts. That atrophy manifests itself in many districts in a failure to put forward candidates. This state of affairs exists not only in districts overwhelmingly attached to one party or another but also in districts in which minority legislative candidates would poll quite respectable votes and even on some occasions have a chance to win. The chances are also that the districts that show up in this analysis—those without enough of a party apparatus to turn up a candidate—differ only in degree of party decay from other districts in which the party has a self-appointed candidate. If so, our indicators detect only a part of the disintegration of party that has occurred.

Another check on the question of whether voter desertion or organizational atrophy underlies the widening dispersion of legislative districts may be made by considering the data recorded in Figure 5 concerning the single-member districts of Ohio and Indiana for 1908 and 1948. The distributions for these states are of considerable interest because they suggest an entirely unexpected clue to the nature of the relation between primary and party organization. The contrast between the 1908 and 1948 Ohio distributions resembles that previously shown to exist between similarly separated Missouri distributions. The Ohio distribution, however, curled up only at the Republican end of the spectrum which reflects in part a difference between the party systems of Ohio and Missouri. On the other hand, the Indiana distribution changed comparatively little between 1908 and 1948. It flattened out somewhat but in 1948 a large proportion of the districts remained in the 60–40 range in general election vote (83.1 per cent against 93.2 per cent in1908), i.e., they were carried by a ratio of 3 to 2 or less. Figure 5 also provides a minimum measure of the effect of party "organization" in maintaining the 1948 Indiana distribution close to that of 1908. Shown there is the form the 1948 Indiana distribution would have taken if one regarded as uncontested those districts in which the nominee was named by party committee rather than by primary.[16]

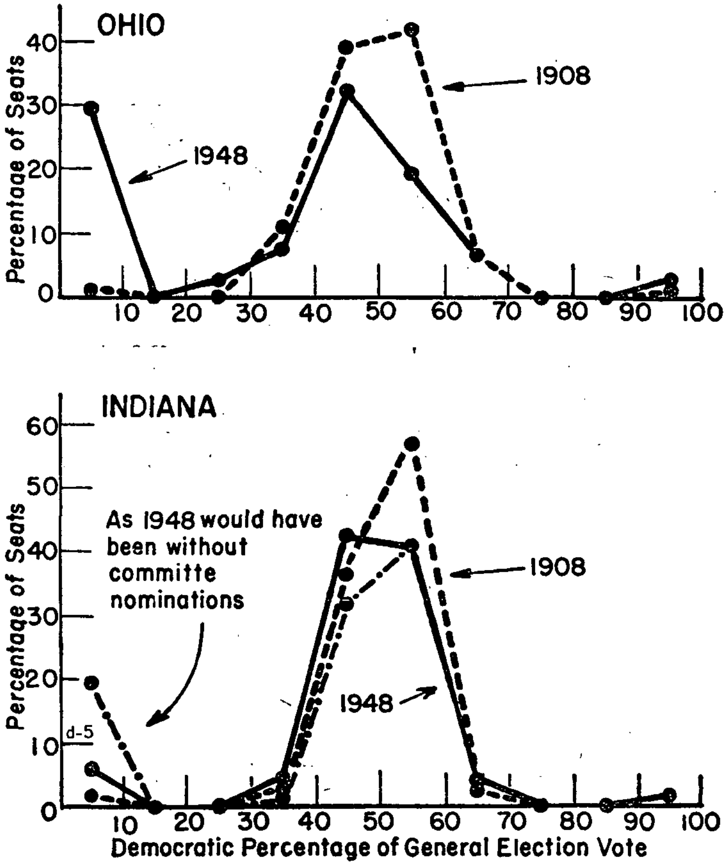

FIG. 5. Pre-Primary and Post-Primary Contrasts: Distribution of Single-Member House Districts, 1908 and 1948, Ohio and Indiana, According to Party Division of District General Election Vote for Representative.

The contrasts between the Indiana and Ohio patterns suggest a reformulation of our notions about the bearing of primary procedures on the vitality of informal party groups and cliques. Indiana nominates its state legislative candidates by direct primary; its candidates for governor, United States senatorships, and other state-wide offices, by state convention. Ohio, on the contrary, nominates for state as well as for local offices by direct primary, although it uses conventions to draft platforms. The necessities of state nominating convention operation may stimulate the maintenance in all localities of party leadership cliques with at least the capacity to round up delegates to the state convention. A delegate from a county 20 per cent Democratic weighs as heavily as one from a county 80 per cent Democratic. Thus stimulated, the activity of party cliques may carry over into the recruitment of legislative candidates. On the other hand, similar external forces may not sustain the same degree of inner-core activity in all districts when a state nominates for state office by direct primary.[17] The hypothesis, thus, might become that the atrophy of local or district party cliques derives not solely from local factors but more significantly from the erosion of the organizational superstructure that once linked local minorities to central points of power within the state. Or, conversely, that local minority cliques once gained vitality from their linkage with state leadership and from the functions they performed vis-à-vis that leadership.[18]

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[16] Undoubtedly in both states there occurred nominations by primary which resulted from draft or designation by party committee. The Indiana procedure segregates at least some of such nominations.

If the primaries so far dissected are representative, minority party cliques in sure legislative districts have tended to decay since the introduction of the direct primary. The vexing problem is how to establish whether the primary had anything to do with that development. From the beginnings of agitation about the primary, 1900–1910, to the present a variety of factors have been operative, all of which might be supposed to have had some effect on the system of informal groupings which make up a "party."

If party atrophy in legislative constituencies is associated with state-wide and local nomination by primary, the same sort of local decay of leadership cliques would not occur in states which retain the convention system for both state and local nominations. Since the use of the primary is so widespread, comparative experience from convention states is scarce. Connecticut, however, remains a more or less simon-pure convention state and its record may be laid alongside the data thus far presented. Figure 6 shows the distribution of Connecticut legislative seats according to the party division of the general election vote in 1908 and 1948. While the 1948 distribution, in comparison with 1908, flattens out a bit, it does so only in parallel with the shift in general party complexion of the districts as measured by their presidential vote.[19] Moreover, the

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[17] If this theory is correct, the 1908 and 1948 distributions of New York legislative districts would resemble those of Indiana, for New York also nominates for important state-wide offices by convention. The 1948 New York distribution curls up at the extremes of the scale of party strength but this turns out to be the result of dual nominations mainly in the Bronx, presumably by inter-party negotiation. The New York data, hence, conform to expectation.

[18] Compare, on the national scene, the historic reasons for being of Republican "machines" in the Southern states: to control national convention delegations and to dispense patronage. Or, consider the role of Democratic organizations in the northern New England states.

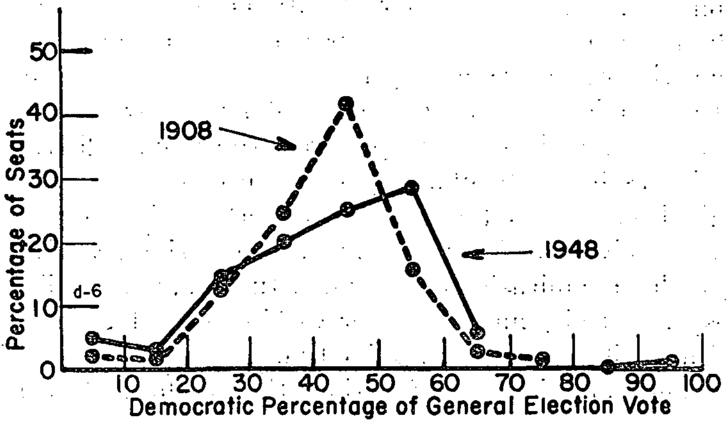

FIG. 6. Sustained Party Competition for Legislative Seats: Distribution of Connecticut House Seats According to Party Division of District General Election Vote for Representative, 1908 and 1948.

proportion of seats in the 40–60 range in 1948 differs very little from that of 1908. If attention is centered on the districts carried by one or the other party by default, striking differences appear between Connecticut and Indiana and the other states on which data have been presented. The proportions of seats uncontested at the general election were as follows:

	1908	1948
Connecticut, all seats	2.4%	4.8%
Indiana, all seats	1.0	5.0
Indiana, single-member districts	1.4	7.6
Ohio, all seats	1.8	18.5
Ohio, single-member districts	2.6	32.1
Missouri, all seats	1.4	21.4

In these contrasts, the Connecticut distributions reflect the least movement of districts into the uncontested category. In Indiana, which retains the state nominating convention but uses the primary for local nominations, the rise in the proportion of uncontested seats has been comparatively small. On the other hand, in those states in which both state and local candidates are nominated by primary, sharp rises have occurred in the proportions of seats won without general election contest.[20]

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[19] That is, a pair of distributions of the Connecticut districts according to their presidential vote in 1908 and 1948 resembles the distributions according to legislative vote shown in Figure 6.

In the absence of contrary explanations for these different tendencies, they could be attributed to the effects of the direct primary and, perhaps more particularly, to the state-wide primary with its reduction of the necessity for the maintenance of going local party cliques in all counties for the operation of the state nominating convention. The problem then becomes one of whether an explanation other than the institutional one can be found for the differences in behavior of Connecticut and the full-fledged primary states. A genuinely rigorous demonstration of the association between primary procedures and organizational decay requires the exclusion of all other explanations of the differing behavior of the two types of states.[21]

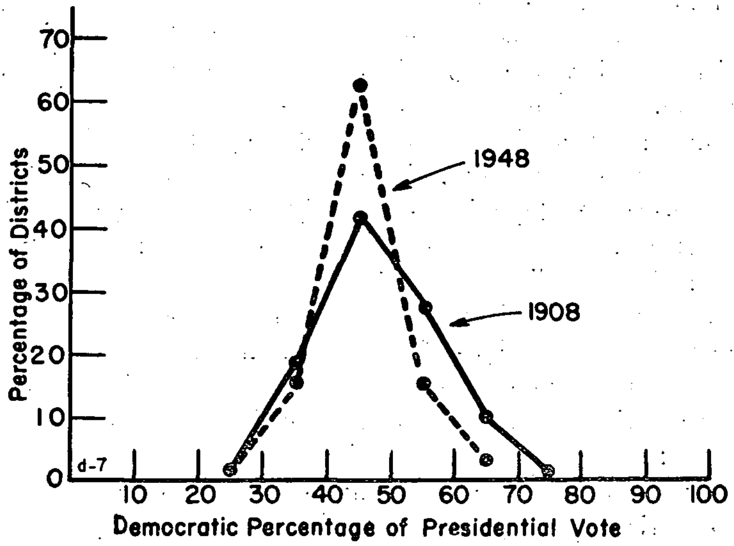

FIG. 7. Sustained Party Competition in Presidential Politics: Distribution of Ohio Single-Member House Districts According to Division of Their Presidential Vote, 1908 and 1948.

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[20] The 1948 Connecticut figure reflects in part the fact that in some rural towns the Democrats could muster only one candidate when two seats in the House were to be filled. Comparable New York figures for the two years are zero and 13.3 per cent. The uncontested 1948 seats were principally the result of dual nominations. If it is assumed that without the availability of this nomination procedure such seats would have been contested, 0.7 per cent of the 1948 seats went by default.

[21] This step, it ought to be made most explicit, represents the crucial stage of the analysis. If it is conceded that inter-party competition occurs quite generally when state-

An alternative explanation of the broadening dispersion of legislative districts could rest on the theory that party competition has roots deep in the social structure of the state. The specific hypothesis might be that in our primary states the movements of population, from country to city, from city to suburb, and so forth, had nicely sorted out Democrats and Republicans among districts to make the cause of one or the other party hopeless in many districts with a consequent disappearance of minority candidates. Meanwhile, in the convention states the demographic trends might not have been such as to destroy the bases for party competition in many districts by this sort of polarization.

If this hypothesis were correct, it would be expected that the distribution of districts according to their presidential vote would have undergone a transformation similar to that of the distribution according to the division of legislative vote. The proportions of districts overwhelmingly Democratic or Republican in presidential voting would have increased sharply. Checks on the states analyzed indicate that the spreading of the legislative distribution 1908–1948 is not simply a reflection of alteration in the presidential distribution. Illustrative is Figure 7 which shows the distributions of Ohio single-member districts according to the Democratic percentage of the presidential vote in 1908 and 1948. Compare this with the legislative distributions for the same districts in Figure 5. The Missouri data are similar. The conclusion seems clear that if in such states there were enough of a party organization in each district to bestir itself to put up a candidate and to campaign a bit, the current legislative distributions would more nearly resemble the presidential.

Another type of check on the general point is provided by Figure 8 which shows the distribution of Massachusetts single-member legislative districts according to the division of their legislative and presidential vote at a single election, that of 1948. At both ends of the distribution the minority party does not put up either enough candidates or enough of a fight to realize its potential in the legislative voting. While a realignment of voters may in some instances produce an alteration

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wide nominating conventions are employed and considerably less generally when both state and local nominations are made by primary, the question remains whether some factor other than nominating procedure accounts for the differences. Since no means exists to determine whether all the other possibilities have been excluded, findings based on such reasoning must remain provisional. The entire analysis illustrates neatly the basic difficulties of comparative government. Even in the comparative analysis of American states, which should hold constant a great many factors that would complicate comparisons among nations, it is extraordinarily difficult to know when significant variables have been identified. For a treatment of the problem of method, see Roy Macridis and others, "Research in Comparative Politics," this REVIEW, Vol. 47, pp. 641–75 (Sept., 1953).

of the distribution of legislative seats quite independently of the primary, it seems apparent that that factor does not account entirely for the changes examined here although it may well have been of some effect.

Several other explanations, in addition to nominating practices, could be offered for the differences between 1908 and 1948 legislative distributions. Thus, the introduction of the popular election of senators may have eliminated centers of state leadership that took steps to assure that a legislative candidate ran in almost every district. While this constitutional change probably was of significance for the organization of state politics, had it been controlling the Connecticut party organization would have atrophied in a manner similar to the state organizations in states using the direct primary. Another explanation, and one more difficult to cope with, is the theory that the informal structures of the Connecticut party system have always had a strength exceeding that of the other states with which it has been compared. Otherwise the Connecticut organization would not have been capable of preventing the imposition of a mandatory direct primary system while other state organizations succumbed to the demand for reform. Unless the retention of the convention system alone be regarded as proof, the supposition would be extremely difficult to test.[22] Another possibility is that over the past forty years those groups disposed to seek office and those

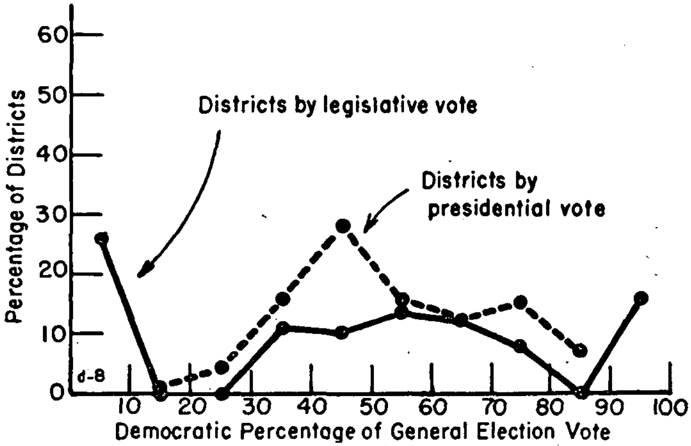

FIG. 8. Contrasts in Presidential and Legislative Competition: Distribution of Massachusetts Single-Member House Districts According to Division of District Presidential and Legislative Vote, 1948.

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[22] The Connecticut convention system is said to persist in part because of the fact that delegates in the Republican state convention are apportioned in the same manner as the members of the lower legislative house. The small towns, greatly overrepresented, would lose advantage by the adoption of the state-wide primary.

groups able to support office-seekers have gravitated toward the Republican party. Nobody is left, so the argument goes, to run for office in many districts under the Democratic banner even though there may be a good many Democratic voters left. If this were the explanation of the tendency in the primary states, the same sort of trend would also probably exist and be felt in Connecticut. It is also possible that such a movement of leadership strata, if it has occurred, may have been, especially among office-seekers, at least in part a consequence of the primary system itself.[23]

III

The data make it difficult to reject the hypothesis that the creation by direct primary legislation of new channels to power, more readily accessible and less readily monopolized than antecedent procedures, operates over the long run to modify the nature of the informal structure of party leadership in bi-party systems. The inferences about the effects on informal party structure have, to be sure, been based largely on the indirect evidence of the presence, absence, or performance of candidates. That evidence deserves weight on the principle that where there are no bear tracks there are no bear. Yet the conclusions should be limited to the time and to the type of situation under examination and perhaps even to the specific cases studied. In particular, the observations should not be projected to primary nominations in large jurisdictions.[24]

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[23] While the governments of American states are notable for their surface similarities, even the most cursory examination unearths persistent pecularities in their informal political organization and practice. The basic question here comes down to whether some feature of Connecticut, independent and separate from the convention procedure, operates to maintain an informal political order different from that of the primary states. One reader suggests a variation on the demographic theory tested in the text, viz., that the changing demography of the primary states oriented the rural districts toward anti-metropolitanism. Given a degree of independence between national politics and state legislative politics, that sentiment of anti-metropolitanism reflects itself in a lack of party competition for legislative seats in these districts even though they may have a substantial minority vote in gubernatorial and presidential elections. In Connecticut, on the other hand, the demographic fact of a sprinkling of smaller cities rather than a dominant metropolis or two has not provided the conditions for so high a degree of metropolitanism. The hypothesis is difficult to test. If it were correct, the Indiana and New York 1908-1948 distributions would behave as do those of Missouri and Ohio. Another reader suggests that the pay of legislators may be a factor. Their real compensation has probably declined, but it may be doubted that this factor bears significantly on our problem, which in a way is to explain why parties at one time or under some circumstances put up candidates without much of a chance to win low-paying offices and do not do so at other times or under other circumstances.

[24] Cortez A. M. Ewing concludes, from his extensive analysis of Southern nominations, that local constituencies show "distinctive characteristics which belie the facile assumption that a large constituency is only an overgrown small one." *Primary Elections in the South* (Norman, Oklahoma, 1953).

Moreover, the examination of local nominations points to state-wide party procedure and organization as a significant determinant of the character of political competition within the districts. Inquiry in that direction would complement and perhaps modify the conclusions. Furthermore, on many questions the data dealt with here can yield no information. The findings boil down about to the following:

1. The transfer, to a considerable extent, of the actual popular choice to the majority party primary probably has brought a basic change in the role and structure of the inner party leadership within the majority party in such legislative districts. Such a conclusion must rest on the assumption that in pre-primary days inner party cliques had a relatively free hand in nominations. That state of affairs must be contrasted with the genuine competition for popular favor that appears at majority party primaries, although the level and regularity with which it is sustained differ from district to district with factors such as closeness of the general election vote. The data tell little about the workings of party cliques within majority districts, other than that if or when they exist they do not ordinarily operate without at least occasional serious challenge.[25]

2. The direct primary leaves a clearer trail in its effects on the minority party. Over the long run there seems to be associated with the primary a tendency for the district party cliques and leadership in the minority party to atrophy. The comparative analysis suggests that a critical factor underlying this drying up of local leadership is not the local primary alone but the combination of the local primary with the alterations in the structure and place of state leadership involved in the abandonment of the state nominating convention. This special case of organizational atrophy may be subsumed under the more general proposition that institutional decay follows deprivation of function.[26]

3. These two broad effects combined alter the nature of political competitors, if not the character of the process of political competition itself. The transfer of actual choice to majority primaries, to the extent that it occurs, affects the monopoly of opposition enjoyed by the minority party, which, Schattschneider asserts, "is the most important

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[25] Related questions on which the data throw no light are whether the shift from competition between candidates *of* parties to that between candidates *within* parties brings with it alterations in the nature of the issues of campaigns, in the conduct of campaigns, in the relation of legislators to their party group in the legislature, in the nature of the choice presented to the electorate, and so forth.

[26] Institutions are hard to kill but survival bereft of function tends to be associated with a metamorphosis of mission, as when an ancient and honorable volunteer fire company lives on to sponsor an annual ball and to appear in festive costume on ceremonial occasions.

asset of the second party."[27] The function of opposition comes to be carried out in considerable measure by candidates within the majority party primary. If carried to its extreme, this process would destroy the minority.[28] More commonly the atrophy of leadership of the second party may leave it less well equipped to perform the function of governance at critical moments when it is willy-nilly swept into office. All this rests on the assumption that the preservation of the monopoly of opposition and the exercise of the rights and duties of that monopoly build and prepare leadership for responsibility.

4. Prudence dictates some hedge about the method of analysis and the interpretations that flow from it. Given the complexity of the sort of political phenomena with which we are concerned, it would be a wise conjecture that the institutional variable is only one of a bundle of factors or causes explicative of the contrasts that appear in different states and in the same state at different times. Variations in the proportions of these unidentified variables might even on occasion produce results that diverge from those in the states examined here and thereby lead to the identification of factors significant but not perceived in the situations examined here. An increase, for example, in the effort devoted to the development and maintenance of a state-wide integrated party system might offset institutional depressants of party life that operate when such effort remains more or less constant.

5. A word of caution for party reformers is in order. If the assumption is correct that changes in informal patterns of action occur only gradually, repeal of the mandatory primary laws would by no means restore tomorrow the party structure existent before their adoption. So firmly established are the forms and practices of direct primaries that probably in many constituencies even in the absence of statutory mandate they would be continued. Only over a longer term could significant alterations in informal party structure be expected to follow a change in nominating procedures.

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[27] Elmer E. Schattschneider, *Party Government* (New York, 1942), p. 82.

[28] One is puzzled why in small constituencies forces set in motion by the primary do not draw practically all voters into the primary of one or the other of the parties at least for local purposes. The organizing influence of gubernatorial and presidential politics may maintain a bi-polarization that has its effects in a modicum of party identification vis-à-vis local candidates even in the smallest constituencies.

POLITICS OF BRITISH CONSERVATISM*

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A rough measure of the resilience of the British Conservative party is indicated by the relatively rapid comeback from the electoral defeat of 1945. Instead of a twenty years' exile, like that of American Republicans, the Conservatives were out of office only six years. To be sure, their return to power was by a very slim parliamentary majority, representing less than half the popular vote cast in the General Election of 1951. And the ups and downs of the Conservative Goverment's popularity, as reflected in by-elections during 1952 and 1953, have shown little more than a capacity to hold the existing narrow margin.[1] For many it must still seem difficult, as it did for Professor Herman Finer in the late 1940's, "to conceive a policy which, within some decades even, might win back for the Conservatives enough votes to support a solid government."[2] Naturally the Conservatives themselves have hardly accepted the fate of serving only an occasional interregnum between periods of Labour rule. Almost entirely without the spectacular issues which have characterized recent electoral successes of American Republicans, the British Right has sought to refute the assumption that it is incapable of presenting a sufficiently attractive political alternative to socialism.

I. IDEOLOGICAL REVIVAL

The Conservative party has not been without an intellectual base from which to launch a counteroffensive against Labour's compound of Fabianism, nonconformist equalitarianism, and anglicized Marxism. Although party spokesmen are tireless in disclaiming the type of ideological prepossession considered the curse of socialism, they do hold that Conservatism is distinguished by "a habit of mind, a mode of feeling, a way of living."[3] The Tory is said to reject rationalistic and a priori doctrine, but to prize the values regarded as "given" in the British political inheritance.[4]

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* First-hand observations included in this article were made in Great Britain during the author's tenure of a fellowship granted by The Fund for the Advancement of Education to enable him to broaden his qualifications for college teaching. The article represents the independent work of the author, however, and he is solely responsible for it.

[1] Following a period of apparent political adversity in the first nine months after the General Election of 1951, Conservative popularity seemed on the increase late in 1952 and during the spring of 1953. The most notable triumph was at Sunderland, South, where the Conservatives in capturing a Labour seat accomplished what no Government party had been able to do in a by-election against its opposition since 1924. *The* (London) *Times,* May 14, 1953, p. 8. However, in the fall of 1953 the voting trend in by-elections was favorable to Labour. No seats changed hands but particularly in the marginal constituency of Holborn and St. Pancras South the Conservatives appeared to have lost ground. *The* (London) *Times,* Nov. 20, 1953, p. 8.

[2] *Theory and Practice of Modern Government,* rev. ed. (New York, 1949), p. 317.

[3] Introduction (by the editor) to *The Conservative Tradition,* ed. Reginald J. White (London, 1950), p. 1.

None of the sources of this outlook are new, and they have been amply explored elsewhere.[5] What remains striking, however, is the extent to which the Conservatives have revived and refurbished their traditional ideology. The articles of faith stemming from Edmund Burke must always have won intellectual admiration, but they have been given a special prominence in the party's postwar campaign to equip the younger generation with a basically conservative approach to politics. Burke's rhetorical passages are profusely quoted in speeches and pamphlets, and one of the party's contemporary intellectual spokesmen advised Conservative students: "In him is contained all that is necessary to political salvation. 'Back to Burke' ought still to be our motto. Read and re-read the *Reflections on the Revolution in France:* this is an exercise that should be performed at least once a year."[6]

Reliance on the *Reflections* is natural enough in the party's circumstances. Burke's admiration for constitutional tradition, respect for the established religion, and belief in evolutionary and organic change all suit the Conservative temper. The present rôle of the party is not seen in such a very different light from the time when Tories, forgiving the fact that Burke had been a Whig, first found in his reaction to the French Revolution the intellectual fount of modern Conservatism. The problem is still to resist, in one way or another, the sharp breaks with tradition that Burke inveighed against so strenuously. Even while insisting on a national uniqueness relative to continental right-wing parties,[7] British Conservatives have customarily accepted Lord Hugh Cecil's view that "from 1790 the whole of English politics was cut in two by the influence of the French Revolution and its principles; and those who stood emphatically against the revolutionary movement made the party in politics which we now call Conservative."[8]

The Burkean disbelief in the efficacy of radical institutional remedies for the ills of the world is applied against the utopian element of socialist doctrine as it was against the enthusiasm of the French Revolution.[9] But now the party finds its traditional pessimism about man's capacity for large-scale social progress more nearly keyed to the popular intellectual mood than it was during much of the nineteenth century. No longer appearing hopelessly reactionary, an emphasis on the limitations of human nature can proudly be presented as a neo-orthodox foundation for Conservative political thinking. It is true that not everyone who has rediscovered a religious view of man's sinfulness is now a Tory. The Labour party, in addition to its non-comformist religious base, has a variety of church members. Yet the long-standing Conservative assumption of human sinfulness must appear especially congenial to the neo-orthodox believer. Furthermore, the Conservative party has always identified itself with the political defense of the established religion.

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[4] The word "given" is used here in the same sense employed by Daniel Boorstin to describe the general American belief that values are "in some way or other automatically defined: *given* by certain facts of geography or history peculiar to us." *The Genius of American Politics* (Chicago, 1953), p. 9.

[5] Notably in Russell Kirk's entirely sympathetic appraisal of Anglo-American conservatism, *The Conservative Mind from Burke to Santayana* (Chicago, 1953).

[6] T. E. Utley, "The State and the Individual," lecture published in the Conservative Political Centre's *The Good Society* (London, 1953), p. 41.

[7] For example, Michael Oakeshott, "Contemporary British Politics," *Cambridge Journal*, Vol. I, pp. 474–90, at p. 479 (April, 1948).

[8] *Conservatism* (London, 1912), p. 40.

[9] G. Kitson Clark, "The Historial Basis of Conservatism," in *The Good Society, op. cit.*, p. 24.

Nevertheless a considerable part of the Conservative intellectual revival may have little or nothing to do with religious neo-orthodoxy. One need not be convinced of man's sinfulness to be impressed with limitations on human progress, or with the obstacles in the way of rational and planned solutions of social problems. Two disastrous world wars and their unpleasant aftermaths have played their part in shattering the liberal optimism of Victorian days. And, more particularly, the opportunities to practice socialist principles in Russia and Britain have in their very different ways been disillusioning experiences for the intellectual community. In this context, it is not surprising to find teachers at Oxford and Cambridge remarking that politically-inclined students have been showing a more pronounced Tory preference than was true in the 1930's. It is still too soon to say that the trend to the Left, so discernible among intellectuals before and during World War II, has been reversed.[10] Most Oxford and Cambridge students normally might be expected to have Conservative backgrounds, and it would be rash to generalize confidently about a postwar flight from socialism. The number of Labour intellectuals is impressive, and it includes many moderates in addition to the *New Statesman* variety. On the other hand, the postwar Conservative campaign has also been served by considerable academic and verbalist talent.[11] The Conservative Political Centre, established in 1945, has produced a sophisticated educational program, and, along with the well-developed party research departments, has furnished employment to aspiring intellectuals often on their way to parliamentary careers.

The invigoration of the party's deep anti-radical tradition has been accompanied by a continued emphasis, at a less intellectual level, of the closely related patriotic motif. In various rhetorical flourishes as well as in the prominence of the Union Jack and other British symbols at party meetings, Conservatives perpetuate their chosen role as the defenders of Queen and Country. This display of national sentiment is markedly different from the practice of the Labour party, whose symbolism largely remains that of the "working class" and of socialism. However, since Conservatism's patriotic appeal was customarily linked to the championship of Empire, its substance necessarily suffered some modification in the postwar years. At least since the time of Disraeli, the party had considered itself the only trustworthy guardian of the Empire. Originally in opposition to the anti-imperialism of the Liberals and later to that of Labour, the Conservative party had rallied the bulk of the nation's sentiment for overseas expansion. Of course, the cause was hardly forsaken in the postwar period. Conservative imperialism has still been expressed, very enthusiastically by one wing of the party, in diatribes against "scuttling" British overseas possessions and particularly in arguments favoring the extension of the Commonwealth's preferential tariff system which prewar Conservative governments had established.[12]

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[10] The pre-1945 undergraduate trend is readily associated with the subsequent rise in the proportion of Oxford and Cambridge men in the Parliamentary Labour party from fifteen per cent, as an interwar average, to thirty-seven per cent in 1951. J. F. S. Ross, "The 1951 House of Commons," *Quarterly Review*, Vol. 290, pp. 305–6 (July, 1952). Ross's figures make it clear that this was not at the expense of the Conservatives, whose proportion of Oxford and Cambridge products also rose in the same period—from fifty-two per cent to sixty-three per cent.

[11] Toryism's apparently thriving intellectual status raises some doubt concerning the broad applicability of Joseph Schumpeter's well-known dictum that the intellectual class accompanying the rise of modern capitalism inevitably becomes hostile to the existing order. Of course, some of the Tory intellectuals may not belong to a class accompanying the rise of modern capitalism. For Schumpeter's discussion, see his chapter, "The Sociology of the Intellectuals," and his additional paper, "The March into Socialism," both in the third edition of *Capitalism, Socialism, and Democracy* (New York, 1950).

What vitiates the maintenance of a distinctively Tory Imperial position is not only the anachronistic character of the traditional grounds for defending the diminishing Empire. Much, though not all, of the old Conservative faith is capable of transformation into an attachment to the newly-fashioned Commonwealth. But here Conservatives find themselves in apparent general agreement with the bulk of their Labour opponents. For example, the Labour party now appears only slightly less anxious to achieve—if it were possible to do so—an Imperial Preference tariff system designed to solve Britian's balance of payments problems. And, save for some polemics having to do with political tactics, there seems little room for difference between the two parties in the matter of preparing colonial areas for self-government within the Commonwealth. While the Conservatives may, when criticizing Labour's supposed weaknesses in foreign as well as Imperial policy, still invoke their status as the party of Empire, such a line does not imply a large-scale resurgence of really distinctive principles.

Much better suited than Conservative Imperialism for postwar revival has been the party's ideological position in relation to the economic order. Here a large portion of the Conservative inheritance appears relevant to the task of resisting socialist doctrines, and without exclusive reliance on a capitalist ration ale of doubtful popularity. Defense of private property and of a leisured class based on property ownership were cardinal features of historical Conservatism. But it was not so much business wealth as landed property that Conservatives traditionally defended. Consequently a doctrinal devotion to free enterprise has never been as dominant a characteristic as it has among American Republicans—whose party origins coincided with the rise of industrial capitalism. The original basis of Conservative thinking is pre-capitalist, and it thus seems entirely appropriate that the Marquess of Salisbury, contemporary representative of the Cecil family, should describe the party's ideal of British society as neither socialist nor capitalist.[13]

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[12] Party conference debates are illuminating in this respect, as reflected, for instance, in the *69th Annual Report* of the National Union of Conservative and Unionist Associations (London, 1948), pp. 64–71.

Significantly, Conservatism now emphasizes the nineteenth-century opposition it offered to the laissez-faire theories of Manchester liberalism. Individual Tories like Lord Shaftesbury and Richard Oastler,[14] who had pressed for legislation to regulate labor's hours and working conditions, are counted the precursors of the Conservative concern for the welfare of the working-class. Disraeli, credited with the political genius of identifying the party with that concern, is celebrated as the chief Tory hero. His insistence on calling the people to the Conservative cause is proudly presented as the party's real tradition, as opposed to the pure and simple defense of the status quo which has so often characterized Conservative statesmanship. In the present perspective, the failure in the period just before and after 1900 to associate Conservatism with the aspirations of the urban working class is considered an unfortunate deviation from basic principles. Belatedly, in other words, the status of prophet is accorded both to Lord Randolph Churchill, for his meteoric Tory Democrat campaign of the 1880's,[15] and to Joseph Chamberlain, for his attempt to transplant the left-wing Liberal social program to his adopted party.[16]

In the forefront of the party's intellectual campaign is Lord Hugh Cecil's belief that "it is an indispensable part of an effective resistance to Jacobinism that there should be moderate reform on conservative lines."[17] Consistent with this view, considerable emphasis has been placed on the positive measures of social amelioration attributed to Stanley Baldwin and Neville Chamberlain during the interwar years. Especially the redemption of Chamberlain's reputation has been largely in terms of the welfare and housing legislation which he advanced with the express purpose of softening class antagonisms.[18] While it might be granted that such legislation was limited by the stand-pat element of the party temperament, Conservatives, in justifying welfare measures, have not had to explain away any doctrinal inhibition on the use of governmental power in behalf of the economically underprivileged. They had been such long-standing champions of state authority against the individualism of British Liberalism that legislative and administrative intervention, as such, represented a continuity rather than a break in intellectual tradition.[19] Characteristic of this attitude is the currently widespread preference among many party activities for the label "Tory," with its connotations of a more positive stand than the title "Conservative."

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[13] Radio address contained in *Conservatism: 1945–1950* (Conservative Political Centre, 1950), p. 96.

[14] A full account of Oastler's reforming career is given by Cecil Driver, *Tory Radical* (New York, 1946).

[15] Of Lord Randolph's role his son wrote long ago: " . . . he urged that energetic sympathy with practical social reform and indifference to selfish class instincts which alone can convince democracy that time-honoured institutions are not merely safeguards but may be made effective instruments of progress." Winston Churchill, *Lord Randolph Churchill*, 2 vols. (London, 1906), Vol. 2, p. 404.

[16] James L. Garvin, *The Life of Joseph Chamberlain*, 4 vols. (London, 1932), Vol. 2, pp. 155–59 and pp. 448–69.

[17] *Conservatism*, p. 64.

[18] The reformist spirit of Neville Chamberlain at the Ministry of Health, 1924 to 1929, is described by Keith Feiling, *The Life of Neville Chamberlain* (London, 1946), pp. 126–48.

However, the contemporary Conservative party could hardly be content with an ideology which did no more than justify the welfare state. A party of the Right does not exist only by competing in the field of social legislation. For one thing, the business interests, which (regardless of tradition) have found political refuge in Conservatism, naturally favor certain limits on governmental intervention. And Conservatives also argue that their ideological juxtaposition to a socialist party requires that they now emphasize the value of preserving a large sphere of freedom from the state. In one sense, this gives the Conservative party a different political role than it once played. Yet it is easy to appreciate how a Tory intellectual like Quintin Hogg (now Lord Hailsham) can reasonably deny that there is anything "inconsistent in having opposed Whiggery in the interest of the Crown, Liberalism in the name of Authority, Socialism in the name of Liberty, and even of the Liberal State." In his widely circulated version of postwar Conservative doctrine, Hogg contended that each of the party's diverse stands was merely part of the true function of righting the balance against currently popular theories. "In fighting Socialism in the twentieth, as they fought Liberalism in the nineteenth century, Conservatives will be found to have changed their front to meet a new danger, but not the ground they are defending."[20]

Essentially it appears that the intellectual ground being defended is the British tradition of balance and moderation which the party considers its own faith. Conservatives not only believe that there is much in the past worth preserving, but that they, because of their attachments to the past, can best decide what ought to be saved.

II. POSTWAR PROGRAM

Although the intellectual basis of Conservatism is flexible enough to justify wide departures from previous advocacies, this did not automatically insure the adoption of a new postwar program. There was always what Winston Churchill, in another period, had called "an obstinate but apathetic resistance to change,"[21] and so the possibility that Conservatism would be identified only with desperate delaying action. This, in all probability, was what led critics to doubt whether the party had the capacity to evolve "a considered series of measures satisfactory to the majority of people."[22] The handful of Tory intellectuals and reformers was thought no match for the inertia of the party mass, tacitly assumed to be tied to policies of the past if not to vested interests of the present.

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[19] "For the tradition of authority is naturally a Tory tradition, and, but for the influence of Conservative prudence and justice, the successors of the Tories might probably have been ready to use the authority of the State with a freedom which we associate with Socialism." Lord Hugh Cecil, *Conservatism*, p. 247.

[20] *The Case for Conservatism* (Harmondsworth, 1947), pp. 15, 53.

[21] *Lord Randolph Churchill* (cited in note 15), p. 121.

It is questionable, however, whether Conservatives, en masse, would have been satisfied with the kind of program they had followed a few decades before. While hosts of unreconstructed Tories may have remained, there must have been others in the Conservative ranks who had themselves participated in and accepted the evolutionary process, accelerated by wartime circumstances, which had so greatly changed British society. Perhaps R. A. Butler, the acknowledged architect of postwar Conservative policy, was not wrenching the party from its moorings so much as he was plainly reflecting the contemporary view when he said: "It is the task of the present generation of Conservatives to found our modern faith on the basis of two features of this age, namely the existence of universal adult suffrage and the acceptance by authority of the responsibility for ensuring a certain standard of living, of employment, and of security for all."[23]

Conservative adoption of the principles of the welfare state was signalized by the favorable reception given in 1947 to the *Industrial Charter*, the party pamphlet officially announcing the enlightened Tory faith. Many of the inarticulate rank and file may have been unimpressed with this product of the party intellectuals, but the pamphlet provoked open attack from only a small die-hard minority who considered the *Charter* to be "milk and water Socialism" or "pink Socialism." This opposition was harmlessly out-of-date and it was drowned in the chorus of approval that the Conservative conference gave to Butler's call for a "strong Government policy."[24] But there was an evident desire to distinguish this policy from the planning advocated by the Labour party. It was claimed that Conservatives would avoid any detailed interference in private business and would seek to encourage individual enterprise consistent with overall economic control. This was rather vague ground on which to stand in opposition to socialism, and the *Industrial Charter* was less important in this respect than it was in making clear that the Conservative party was committed to the full employment program which the British community now expected of any government.

Similarly the party offered reassurances that it would retain whatever means of rationing and price control were necessary to the "fair shares" policy instituted during the war but subsequently claimed by Labour as its own equalitarian-minded policy. Conservatives had to establish their good faith in "fair shares" without at the same time turning their backs on the rising discontent, especially among their own followers, over the bureaucratic annoyances of the rationing system. Consequently, there was an ambivalence about the party's statement:

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[22] *Theory and Practice of Modern Government* (cited in note 2), p. 317.

[23] Introduction to *Conservatism: 1945–1950* (cited in note 13), p. 3.

[24] *68th Annual Report* of the National Union of Conservative and Unionist Associations (London, 1947), pp. 46–54.

> It follows that we should be able to take off the rations and controls far more quickly than the Socialists who scorn the practical methods of experience and enterprise. But we give this pledge. We will not remove the control from any necessity of life until we are certain that it is within the reach of every family.[25]

In fact, when the Conservatives did return to power they were saved from the possible ideological embarrassment of having to retain economic controls roughly as they were. Conditions eased sufficiently in 1952 and 1953 so that it was possible, consistent with the party's pledge to consumers, to accelerate the process of derationing already begun by the Labour Government and so to claim a policy of "setting the people free."

A more concerted anti-socialist conception was that of a "property-owning democracy," increasingly prominent in the postwar literature of the Conservative party. Here, without challenging in the name of free enterprise any accepted values of the electorate, the party could stand on a set of principles it regarded as its own. Quintin Hogg stated it this way: "Just as political democracy and political freedom mean the diffusion, the sharing of political power, so economic democracy, economic freedom, means the sharing, the diffusion, of economic power, that is property, as widely as possible throughout the community. This diffusion Conservatives regard as the very antithesis of Socialism."[26] Following that theme, the party has proposed a society in which there would be more capitalists, in the sense of more Englishmen with a property-owning stake in land or in industry.[27]

Programmatically much of the talk about a property-owning democracy is very loose, particularly with reference to what is called "co-partnership in industry,"[28] but there is one area in which the Conservative preference for individual ownership has been of direct political significance. That is in the matter of government-sponsored housing programs. Conservatives have displayed as definite a bias in favor of encouraging the building of houses for sale as the Labour party has in building for rent. At almost every postwar conference, Conservatives enthusiastically endorsed resolutions to aid the prospective owner-occupier either through new building or through the sale of already existing public housing. The party evidently agreed with the remarks made by a Member of Parliament in 1947: "I am absolutely convinced that a dynamic scheme of house ownership is not only a desirable thing in itself, but it is something which would win us hundreds of thousands of votes at the next General

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[25] *Industrial Charter* (Conservative Central Office, 1947), p. 14.

[26] Quintin Hogg, *The Case for Conservatism* (cited in note 20), p. 63.

[27] Emphasized in *Agricultural Charter* (Conservative Central Office, 1948), pp. 4–5.

[28] For example, in Anthony Eden's electoral broadcast of Oct. 19, 1951, issued by British Information Services, ID 1109, pp. 7–8.

Election."[29] Not only did the encouragement of house-ownership constitute a non-socialist welfare measure, but it was even anti-socialist in its supposed effects on the social attitudes of the new property-holders. It is not surprising that a Conservative could write enthusiastically about raising the proportion of owner-occupied houses from the existing 30 per cent towards the 50 per cent cited for the United States.[30]

Among the Conservative rank-and-file the popularity of outbidding the Labour party in the housing field was firmly established by a remarkable event at the party's annual conference in 1950. Ordinarily such conferences, attracting three or four thousand delegates, are docile gatherings designed to engender political enthusiasm. However, in 1950, during what started as another routine debate leading to approval of the usual resolution urging a more effective governmental housing program, so much floor support unexpectedly developed for a definite target of 300,000 houses annually that the figure was finally inserted in the resolution—quite obviously against the original wishes of the party leadership.[31] The target of 300,000 was well above any annual accomplishment of the Labour Government and it was also so high as to seem beyond the reach of a prospective government concerned with a balanced distribution of scarce resources. But once committed to the magic number, the Conservative party made the most of it as a campaign slogan. In the 1951 General Election, it was hedged only slightly in the official campaign statement.[32] And three-quarters of the individual Conservative candidates, in addresses to their respective constituencies, referred specifically to "300,000 houses." Altogether, some kind of reference to housing was made in 86 per cent of the Conservative election addresses, compared to 55 per cent in Labour addresses.[33]

In office, after October, 1951, the Conservatives began the process of living up to their promise to expand the house-building program, as well as to stress more heavily the building of homes for sale. Whatever the effect on other construction activities, there was no doubt of the political necessity for exceeding the housing accomplishments of the Labour Government. Harold Macmillan, the responsible minister, was therefore very much the hero of the 1952 party conference when he announced, with pride, the beginning of an increased rate of home-building.[34] As the rate increased in 1953 to very near the cherished 300,000, Conservatives considered that they had scored a substantial popular triumph.

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[29] L. D. Gammans, in *68th Annual Report* (cited in note 24), p. 97.

[30] Michael Fraser, "The Ownership of Property," in *The Good Society* (cited in note 6), p. 54.

[31] *71st Annual Report* of the National Union of Conservative and Unionist Associations (London, 1950), pp. 56–65. First, the platform ruled out of order the suggested inclusion of the 300,000 figure, then attempted to conduct a vote on a much less specific amendment to the housing resolution, and only finally yielded to an uproar in behalf of the fixed number. Speaking for the leadership, Lord Woolton graciously said "This is magnificent," but he was also reported to have added *sotto voce*, "This is deuced awkward." Ivor Bulmer-Thomas, "How Conservative Policy is Formed," *Political Quarterly*, Vol. 24, pp. 190–203, at p. 202 (April–June, 1953).

[32] *Britain Strong and Free* (Conservative Central Office, 1951), p. 26.

[33] These figures are based on a study of one in four election addresses made by David E. Butler, *The British General Election of 1951* (London, 1952), pp. 55–59.

Politically the Conservative position has not been so fortunate with respect to the National Health Service. Although the party, as the dominant partner in the wartime coalition, had accepted the main outlines of the health program, a suspicion remained as to the wholeheartedness of the decision. The suspicion was aggravated by the fact that the Conservative parliamentary representation voted against the Labour Government's bill establishing the Health Service in 1946. The explanation that this vote was not against "the principle of a national, comprehensive, 100 per cent health service,"[35] but only against particular aspects of the Labour bill, might have been genuine enough, but it left a cloud of doubt. Subsequently, Conservatives were most careful to avoid any indication of opposition to the continuation of the tremendously popular service. Criticism was largely limited to what was called the "partisan spirit" in which Labour had carried out the plans of the coalition government.[36]

This was not the only way in which Conservatives sought to distinguish their support of the health service (and of other welfare measures) from that of the Labour party. While openly welcoming some redistribution of wealth through the provision of social services, it was still insisted that the process should not aim at a complete economic equality. "We believe in fair shares in order to provide a basic minimum," R. A. Butler wrote. "We recognize that in any form of society there must be failures. But one of the greatest motive forces of society is success and it is the task of Government to encourage success."[37] More metaphorically, Winston Churchill made the same point in an election address when he said that the Conservatives wanted to preserve an economic ladder while providing a net in which to catch those whose ill luck required the attention of the social services.[38] But despite this non-socialist state of mind, no grounds were given for any significant departure from the social legislation enacted by Labour. Indeed, the Conservative Government's choice of Iain Macleod as Minister of Health tended to confirm the party's support of the most important postwar measure. Macleod, decidedly a Tory reformer and a Butler man, had been elected to Parliament as recently as 1950 and had a record that was neither hostile nor lukewarm toward the National Health Service. Even while arguing for the maintenance of minor charges in the generally free system of medical care, Macleod was convincing in his disavowal of a desire to transform the character of the service by imposing additional charges in the future.[39]

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[34] *72nd Annual Report* of the National Union of Conservative and Unionist Associations (London, 1952), pp. 62–64.

[35] *H. C. Deb.*, Vol. 422, col. 66 (April 30, 1946).

[36] *The Right Road for Britain* (1949) contained in *Conservatism: 1945–1950* (cited in note 13), p. 204.

[37] "Conservative Policy," *Political Quarterly*, Vol. 20, pp. 317–325, at p. 325 (Oct.–Dec., 1949).

[38] Electoral broadcast of Oct. 8, 1951, issued by British Information Services, ID 1085, p. 4.

A complicating feature of Conservative support for welfare measures was the party's virtually inevitable commitment to lower taxes. Not only was Conservatism, on principle, compelled to resist Labour's preference for taxation as a means for further redistribution of income, but insofar as the party embraced the cause of private enterprise it preached the gospel of reducing taxes to promote business incentive. Butler went so far as to declare: "It is on the weight of taxation that the clash between Conservative and Socialist policies is sharpest."[40] Conservatives did not, it is true, promise any very drastic reduction in the existing tax levels, but an admitted bias in that general direction was incompatible with any broad expansion in welfare expenditures—especially in light of the priority Conservatives ordinarily assigned to defense and rearmament.

The real problem for the Conservative Government was to avoid any sizable contraction in welfare programs while at the same time affording some measure of tax relief. In light of Britain's staggering income tax levels, no government interested in the preservation of the capitalist system could afford to neglect the tax issue, and Chancellor Butler's 1953 budget did eliminate a nearly confiscatory rate at the highest income bracket as part of a policy of relatively modest reductions in a wide range of incomes. The Conservative defense of this policy was a frank statement of the case for business incentives: "This Budget is primarily an industrial Budget. Its purpose is to help industry, and it is none the worse for that. If we help industry in a Budget we help everybody, rich and poor alike."[41]

An even more direct opportunity to champion private capitalism arose out of the Conservative resistance to the nationalization program of the Labour Government. In the last few years there has been a clear-cut battle line between the two parties on this issue, but, as a matter of fact, the postwar Conservative stand has not been entirely of one piece. In 1946, for example, when the Labour Government introduced its legislation to nationalize the coal mining industry, Conservatives, while voting against the measure in the House of Commons, did not declare themselves against nationalization as such. Mainly they objected to the bill's arrangements for administration and compensation.[42] Subsequently, however, the tenor of Conservative opposition tended to vary with the industry being nationalized. The defense of private enterprise was a good deal more thorough-going with respect to road transport and steel than it was when Labour nationalized electricity and gas. This variation is compatible with the party's claim to be undogmatic about economic policy. With an absence of full faith in private capitalism as an alternative to nationalization, Conservatives have been inclined to favor either a mixture of public and private ownership in a given industry, or a combination of public control with private ownership.

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[39] *H. C. Deb.*, Vol. 515, cols. 1725–26, 1742 (May 18, 1953).

[40] "Conservative Policy," *op. cit.*, p. 320.

[41] G. E. P. Thorneycroft, President of the Board of Trade, *H. C. Deb.*, Vol. 514, col. 671 (April 20, 1953). The Conservative defense was in the same vein at Vol. 516, cols. 481–554 (June 11, 1953).

[42] *H. C. Deb.*, Vol. 418, cols. 701–834 (Jan. 29, 1946) and cols. 874–1074 (Jan. 30, 1946).

Party pronouncements reflected this moderate and compromising attitude. In 1949 the Conservative statement on nationalization, embodied in *The Right Road for Britain*, combined a justification of the party's opposition to all nationalization proposals with an acceptance of many as now accomplished facts. A Conservative government would, it was promised, "restore free enterprise where that is practicable," but would in other cases leave industries nationalized in order not to aggravate "industrial discord."[43] Although there was obviously a great deal to be said for the sheer impracticability of wholesale denationalization, at the same time this was also a convenient reason for Conservatives to avoid taking an unpopular rigid position which their "undogmatic" preference for private enterprise would not have justified in any case. In this connection, the party's final campaign promises, before being returned to office, are especially significant. Only in the cases of the iron and steel industry and of road transport did the Conservative election manifesto of October, 1951, commit the future government to denationalization. With respect to the Iron and Steel Act, which the Conservatives had consistently opposed without any inhibitions, repeal was flatly promised. Not only was this plank politically propitious, but it was one that was entirely possible to translate into governmental policy. The nationalization of iron and steel, partly because of its original conception and partly because it was still so recent, had not destroyed the identity of the old private firms but had simply transferred their ownership and overall direction to a national board.

Transport presented a less simple problem for the party. The need for both public and private enterprise in this field was admitted by the election manifesto, and nothing was said to indicate a desire to denationalize either the railways or road passenger services. On the other hand, the party was specific in its promise to give the private road haulers a chance to come back into their old business, which, like iron and steel, had been profitable. There was, in short, a strong probability that private enterprise would want to repurchase the assets. In other situations, the Conservatives were unpledged to any drastic change. Gas and electricity were to be administratively reorganized, and civil aviation developed in terms of a combination of public and private enterprise instead of the current nationalized monopoly. In the case of coal, where anything even approaching denationalization would have symbolized a return to the bad old days of underemployment and unplanned exploitation of resources, the Conservative party flatly stated: "We shall not denationalize the coal industry."[44] There was only some rather indefinite talk about reorganizing and decentralizing.

The actual policies of the first two years of the Conservative Government have been in accord with the practical circumspection of these campaign promises. No more thorough-going renunciation of Labour policies had been dictated by the election returns, and the new administration proceeded so slowly with its modest denationalization program that the party held office for more than a year before the appropriate legislation was introduced. The Government's transport measure included a plan for regionalizing the management of the publicly owned railways along with return of road haulage to private enterprise. Generally the proposal was advanced much more definitely in the name of improving efficiency than in the name of restoring private ownership for its own sake. "We believe," said the Minister of Transport, "and we think that a majority of the people in the country believe, that competition gives a better service than monopoly. We believe that the best way to have a good service is through decentralization; and that independent private enterprise, or, in the case of the railways, regional enterprise, is the best way to achieve this decentralization."[45] It should be added that road haulage as well as the railways was to be subject to a large degree of central regulation by governmental authority, which was to be somewhat more highly systematized than before.

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[43] *Conservatism: 1945–1950* (cited in note 13), p. 192.

[44] *Britain Strong and Free* (cited in note 32), pp. 20–22.

Iron and steel denationalization was justified along basically similar lines even though, in this instance, the argument for private enterprise was more prominently advanced than it was in the case of transport, which partook so much of the character of a public utility. The Conservative iron and steel bill was said to have two objectives—with some significance attached to the order in which they were discussed: first, to establish a "comprehensive system of public supervision embracing the whole iron and steel industry;" and second, to "restore independence, initiative and financial responsibility to the companies and so assure that they have the strongest incentives to produce as cheaply and efficiently as possible."[46] The minister responsible for the measure was most concerned, in the House of Commons, to emphasize the positive supervisory aspects of the legislation. Now, he said, there would be created an iron and steel board with broad powers over prices charged everywhere in the industry, and not limited in its scope to those basic industrial facilities which were under the authority of Labour's national board by virtue of ownership. Consequently the Conservatives were in the position of justifying their denationalization partly on the ground that it would involve a greater and a more effective system of public control than was possible under the national ownership established by the Labour Government.

Certainly there is nothing about the character of this type of measure to suggest that Conservatism is fostering a policy based primarily on the tenets of free enterprise as those tenets would be understood in the United States. The present Conservative Government seems content to fit its economic program to the very large measure of governmental intervention which the public has come to expect and apparently approve. The party's attitude toward the nationalized industries is much like its acceptance of welfare measures already enacted. This means that Conservative policy looks suspiciously like Labour's campaign program of a decade ago. In that light, the Conservative Government, defending the new status quo, could only hold on so long as the electorate is uninterested in any further advance towards socialism. While that might be a very long time—since just now the Labour party is not very clearly promising much by way of another advance to socialism—nevertheless it is a perspective which Conservatives would be unwilling to admit. Even without many positive measures to juxtapose against socialism, it would be argued that postwar Conservatism, fully converted to Tory Democracy, is capable of future reform in order to preserve British economic society against any need or demand for drastic change.

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[45] *H. C. Deb.*, Vol. 507, col. 1405 (Nov. 17, 1952).

[46] *H. C. Deb.*, Vol. 508, col. 266 (Nov. 25, 1952).

III. THE PARTY AND ITS APPEAL

Not just the principles but also the tactics of the Tory Democrat have been adopted in the postwar Conservative campaign to attract and hold the loyalties of a non-socialist majority of British voters. The existence of such a majority has been presumed even on the basis of the 1945 General Election when, despite Labour's vast parliamentary majority, less than half the electorate had voted Labour. However, this superficial calculation would leave the Conservative party only a very small potential margin of non-socialists. Just how small was illustrated by the fact that in 1951 Labour, while losing parliamentary control, polled 48.8 per cent of the vote compared to a flat 48 per cent for the Conservatives. To have a popular majority, Conservatives would have to add most of the remaining Liberal vote. Along that line the party was encouraged by the fact that in 1951 it attracted an estimated six out of ten former Liberal voters in constituencies where there was no Liberal candidate.[47] The Conservative party's short-run fortunes have been linked to the recruitment of this or a higher proportion of the fading Liberal party's stubborn residue, but the effort to establish a really firm electoral base has not been so narrowly limited. On the reasonable assumption that many Labour voters are far from being convinced socialists, Conservatives have tried to detach a portion of the opposition's principally working-class following.

So far the postwar Conservative party's most impressive political accomplishment has not been any such gain at Labour's expense, but rather the organization of that part of the electorate already predisposed to its cause. In bringing into the fold of active membership large numbers of ordinarily passive supporters and in getting to the polls the maximum of potential voters, the party machinery (rebuilt after 1945 under Lord Woolton's managerial direction) proved to be a model of efficiency.[48] Effective local political associations were more obviously indispensable for Conservatives than for Labour, whose affiliated unions were a ready-made means for reaching a mass public. Therefore, an important manifestation of Conservative organizational success was the large-scale building of Young Conservative associations at the local level. Both in membership and in active political participation, the Young Conservatives operated on a much greater scale than the counterpart Labour youth movement, which customarily displayed a left-wing deviationism that was more a nuisance than an aid to the Labour party. Conservative central headquarters could afford to encourage the growth of its affiliate and even to provide that Young Conservatives should send two of every seven constituency representatives to the annual party conference. As a Labour politician enviously remarked: "These youngsters were taken seriously by the [Conservative] Party, and they took themselves seriously. They staged debates and discussions; they canvassed hard; they attended speakers' classes—and they had a strong social pull."[49]

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[47] *The British General Election of 1951* (cited in note 33), p. 242.

[48] The important subject of party structure is not dealt with here in detail. On the basis of the available published materials, the postwar Conservative organization has already been described in an American journal. See Samuel Beer, "The Conservative Party of Great Britain," *Journal of Politics*, Vol. 14, pp. 41–71 (Feb., 1952). A more intimate

The social pull as a element in the success of the Young Conservatives becomes readily apparent in any first-hand observation of the associations. Ideology may well be the basic inspiration for the organization and much of its leadership, but no one would deny that the mass membership is attracted by the consequent social opportunities. This is not so simple as joining in order to attend Young Conservative dances. There is also the chance, greatly valued in middle-class circles, of mingling with the upper-crust of local society. For the ambitious young clerk or salesman, an entree to his community's Conservative clubhouse is a step on the road to well-being. No doubt social climbing serves similar political purposes elsewhere, but the British Conservative party has thoroughly systematized the process.

Probably only in a society like Britain's where great importance is still attached to class status could a political party make so much of the social prestige of its leadership. In this sense, the upper-class character of Conservative parliamentary representation is an advantage rather than a handicap in recruiting support. After the 1951 election, 264 of the 321 Conservative M.P.'s were products of the private and expensive British educational institutions known as "public schools." Plainly the party's effort to secure working-class votes did not involve any abrupt shift to proletarian spokesmen. Only ten of the Conservative M.P.'s had gone to the "elementary school" which provides the standard education for most Englishmen—including the bulk of the Conservative voters.[50]

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account is provided in the work of a former M.P. with experience in both major parties. Ivor Bulmer-Thomas, *The Party System in Great Britain* (London, 1953), Part III.

[49] Wilfred Fienburgh, "The Tory Machine," *New Statesman and Nation*, Vol. 43, pp. 636–37 (May 31, 1952).

[50] Figures on Conservative educational background are taken from Ross, "The 1951 House of Commons" (cited in note 10). Another analysis by Ross (of the 1950 House) included the summary statement that only one out of every forty Conservative M.P.'s had attended the elementary school, but that six out of seven Conservative voters had

These educational statistics do not mean that Conservative M.P.'s are predominantly of the aristocracy. The bulk of public school graduates are likely to be of middle and upper-middle class origins, since education of that standard is cherished by most parents of professional status. Nevertheless it is true that fully one-third of Conservative M.P.'s do have close connections with families of hereditary title, and that the top-level party leadership reflects the tradition of the British ruling class. An aristocratic element is, if anything, more prominent in the postwar party, especially in the 1951 Government, than it was in the interwar cabinets of Baldwin and Chamberlain. Men of the nation's traditional political class, like Churchill, Eden, and Salisbury, have not entirely superseded the businessman emphasis of the 1920's and 1930's, but there is no sign that the party regards their class status as anything but an entirely normal feature of Conservative leadership.

Traditional respect for the virtues of a ruling class is, in some sense, built into the structure of the Conservative party. Or at least it looks so in contrast to the deliberate equalitarianism of Labour party proceedings. Not only are Conservatives generally content to accept as party policy what is handed down from above, but they surround their Leader, as he is unabashedly called, with a ritual designed to elevate his status above that of ordinary intra-party debate. Whether he is the head of a government or merely of a parliamentary opposition, the Leader appears to deliver his address to the annual Conservative conference only after debate has formally concluded. Although he cannot presumably ignore the wishes of his followers, the Leader customarily issues the party's election manifesto as his own statement rather than that of any representative committee. More significant than the mechanical arrangements is the subtle atmosphere of respect for established leadership that pervades Conservative ranks. Despite well-known conflicts over position and policy, open attacks calling for repudiation of the party's top personalities would be outlandish behavior at a Conservative public meeting. The many rank-and-file activists who are of middle-class background emulate their social superiors in avoiding any such display of bad taste. Conservative conferences even perpetuate the address "My lords, ladies and gentlemen" as the customary way of beginning a speech.[51]

While maintaining the form and some of the substance of its aristocratic traditions, the Conservative party has tried to remove institutional barriers to the recruitment of fresh talent at the leadership level. No plainer sign could be found than the reform in the methods by which constituency associations choose their parliamentary candidates. The local selection process had long been subject to a nominal central control, formalized but not made stronger after the war by a specific provision that an association, if it wanted central

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done so. "The Personnel of the Parties," *The British Party System*, ed. Sydney D. Bailey (London, 1952), pp. 168–70.

[51] An American should perhaps take care to avoid exaggerating the significance of this type of affront to his social equalitarianism.

campaign support, had either to name a candidate from an approved list drawn up by a committee operating from party headquarters, or secure (before adoption) the committee's approval of the prospective candidate.[52] Taken alone, this provision left room for the continuation of the widely prevalent prewar practice of selecting from among several approved candidates the one who was willing to make the largest financial contribution to the local association. In 1944 the party had forbidden candidates to subscribe more than 100 pounds a year, but it was still possible, within this rather high limit, for local selection committees to collect bids, particularly in constituencies which Conservatives had a good chance to win. After the war a concerted effort was made to end this plutocratic bias. In 1948, the party ruled that no candidate should give more than 25 pounds, and no M.P. more than 50 pounds. Also it was established that "in no circumstance shall the question of an annual subscription be mentioned by any constituency selection committee to any candidate before he has been selected."[53]

Whether this prohibition can be fully enforced may be questioned, but there can be no doubt of the party's genuine desire to emphasize political talent in the selection of parliamentary candidates. That the policy had some practical effect is attested by the universal admission that the large crop of young Conservative M.P.'s newly elected in 1950 contained an unusually high order of ability. Whatever sting might once have been carried by the old opposition taunt that Conservatives were the "stupid party" has assuredly become inappropriate in the present parliamentary situation. In light of the Tory intellectual revival already noted, it is plain that the British party of the Left has nothing like a monopoly of what Americans, inelegantly, have called "eggheads."

Some of the party's postwar recruitment has been the result of a movement of previously Liberal or independent opinion. Take, for instance, the personal political history of Sir Arthur Salter, who (before he was accorded a lordship in 1953) first served from 1937 to 1950 as an Independent M.P. representing one of the now abolished University constituencies and then for two years after 1951 as a Conservative and a member of Churchill's ministry:

> . . . in the years before the war I was opposed, on most issues, to the Conservative Governments of Mr. Baldwin and Mr. Chamberlain. In the 1945 Parliament I watched, still as an Independent, both Socialism in practice and the evolution of Conservatism in reaction to it. I came during this period to two definite conclusions: first, that socialism as understood and applied by the Socialist Government was undermining the national economy and threatening the personal liberties for which Liberalism has stood; second, that Conservatism had so evolved as to be much nearer to the prewar Liberalism than to either the older Conservative or present Socialist policy. I found myself, therefore, while applying the same principles as I had professed when I first stood as an Independent, consistently supporting the Opposition. It was, as far as I could judge, not that I had

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[52] *Final Report* of the Committee on Party Organization (approved by the Central Council of the Conservative and Unionist Associations, July, 1949), pp. 31–33.

[53] *Interim Report* of the Committee on Party Organization (approved by the Conference of Conservative and Unionist Associations, Oct., 1948), p. 13.

> myself moved to the Right, but that the Right had moved towards what had been before the Center.[54]

Despite its polemical quality, this passage does ring true as a description of the moderate's state of mind when almost forced to choose between the two major parties during the accelerated bipolarization of postwar British politics. Many Liberal activists, wedded to an anachronistic free trade doctrine, have still refused to make the choice, but for those willing to forsake the old party, Conservatism looks as hospitable as it does for Independents. A Liberal's social conscience is increasingly at home in the postwar Conservative party.

Moderate opinion tends to be further impelled in the Conservative direction by any appearance of left-wing ascendancy in the Labour party. Liberals and Independents are much less likely to be attracted by socialist doctrinaires than by Labour's humanitarian reform element. Consequently the Conservative party has a vested interest in the growth of Bevanism in the Labour movement. Convinced that root-and-branch socialism is incapable of winning an election, Conservatives feel they have something to gain politically by the rise of Aneurin Bevan and his followers to dominant positions in Labour councils. Even without such an unlikely event, Conservatives have found it expedient to emphasize the relatively minor but highly articulate Marxist component in Labour thinking. While ordinarily refraining, since 1945, from a simple condemnation of Labour as communism in disguise, Conservative leaders have not hesitated to describe a full development of British socialism as similar, in essentials, to the Russian system.[55]

The Conservative stake in Labour's potential extremism is important in an area somewhat beyond the contest for the allegiance of former Liberals and Independents. It is also related to the patent desire to win increased working-class support and particularly to the long-range Conservative design of modifying the voting habits of the bulk of trade unionists. The latter is at once the most difficult and the most important of tasks. The unions do not merely support the Labour party. Practically speaking, they are the largest section of that party, and to date entirely capable of containing the doctrinaire socialist forces which have always pressed for a policy to the left of that favored by the hierarchy of union leadership. So long as that situation prevails, all that an increasingly favorable Conservative disposition toward unionism can do is to prepare for a still unforeseeable Labour defection, and in the meantime try to increase the number of trade unionists—now claimed to be 3,000,000—who vote Conservative despite the Labour party ties of their organizations.[56]

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[54] A. Salter, "British Conservatism Today," *Yale Review*, Vol. 41, pp. 1–12, at pp. 5–6 (Sept., 1951).

[55] For example, R. A. Butler's "We must never forget that the Socialist faith is simply an off-shoot of the Marxist doctrine" (May, 1948); Harold Macmillan's picture of the "Socialist State, when all the means of production, distribution and exchange—that means all industry, all shops and all banking,—become State enterprises, as in Russia" (July, 1949); and Winston Churchill's "there is no real difference between a full application of the Socialist system and Communism" (July, 1949). *Conservatism: 1945–1950*, pp. 91, 103, and 106.

Establishing their friendship to trade unionism has not been an entirely strained role for Conservatives. In spite of an inevitable identification with the old-time employer opposition to union organization and more particularly with the restrictive legislation that followed the 1926 General Strike, the Conservative party could fairly claim that for some time past it had accepted unionism as one of the facts of British economic life. The party remained opposed to a few union practices like the closed shop,[57] but generally in the postwar years Conservatives asserted that their policies were more favorable to unions than were the long-run aims of the Labour party. This superficially unconvincing assertion rested on the view that collective bargaining, involving the right to strike, was more secure under competitive private enterprise than under a prospective socialist order where there would be no alternative employer to the state.[58] The policy of socialism, in the words of one conference resolution, was "inconsistent with both the principles and practice of free Trade Unions."[59] The Conservative ideal of a union was one that would "look after wages and hours and conditions" and not "play politics."[60]

A positive interest in unionism was largely a postwar phenomenon. Whereas before 1939 the Conservatives had "Labour Advisory Committees" whose role it was to support non-unionist workers in various constituencies, after World War II these were replaced by "Trade Union Councils" meant to encourage Conservative workers to be active unionists exercising as much internal political influence as possible. Unions were now officially recognized within the party structure and on a generous scale. Each constituency association was supposed to send one trade unionist representative to the annual conference, and also to have the chairman of the local Trade Union Council as a member of its own executive body.[61] This recognition was not proportionate to the activities of unionists in the Conservative cause, but was a means of fostering increased future participation. So far, while the trade unionists who appeared at party conferences were more than "trained seals" (as Labour politicians called them), they were without large organized followings.[62]

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[56] The frequent Conservative claim of 3,000,000 trade unionist voters is cited by B. C. Roberts, "Trade Unions and Party Politics," *Cambridge Journal*, Vol. 6, pp. 395–98 (April, 1953). What the Conservative party would appreciate, but can hardly hope for, is an adoption by trade union leaders of the traditional American Federation of Labor policy of rewarding labor's friends and punishing its enemies—without any fixed arrangement with one party. Although at present this seems inconceivable, there are occasional signs of T.U.C. restiveness with the current Labour party relationship. See *The Economist*, Vol. 169, pp. 85–86 (Oct. 10, 1953), for an account of indiscreet remarks about a "candid examination" of the relationship made by Tom O'Brien, chairman of the T.U.C. in 1953. O'Brien was not considered typical, but subsequently there was a story concerning the plans of other and more important T.U.C. leaders to reduce their unions' contributions to the Labour party's general fund and to increase the sums given to individual Labour party candidates of the unions' own choice. *The* [London] *Times*, Oct. 31, 1953, p. 3.

[57] *Industrial Charter* (cited in note 25), pp. 21–22.

[58] Speech by Sir David Maxwell Fyfe (Nov., 1949), in *Conservatism: 1945–1950*, p. 122.

[59] *71st Annual Report* (cited in note 31), p. 52.

[60] Sir David Maxwell Fyfe, *ibid.*, p. 56.

[61] B. C. Roberts, "Trade Unions and Party Politics" (cited in note 56).

Nothing in postwar Conservatism's anxiety to court trade unionists has been more pointed than the party's changed position with respect to governmental regulation of labor organizations. While this item might have been considered as an aspect of the Conservative postwar program, its importance is more obviously tactical in nature. At issue were the terms of the Trade Disputes Act of 1927 which had forbidden general and sympathetic strikes, prohibited civil service unions from having outside affiliations, and made it necessary for unions collecting political contributions from members to get their express consent (contracting-in rather than contracting-out). The Conservatives while in office even through the war had always refused to alter the act to meet the continued objections of trade unionists. And in 1946 when Labour repealed the controversial legislation there was a vigorous Conservative opposition, particularly against the shift from the contracting-in requirement to the practice of allowing unions to collect a political contribution along with a member's dues unless the member specifically contracted out of the levy.[63] This procedure was manifestly to Labour's financial advantage,[64] but otherwise the repeal had no immediately important consequence except to satisfy unionists that the supposed punitive spirit of 1927 was wiped off the statute books.

Insofar as Conservatives continued to stand for the principles of the 1927 Act, they undoubtedly imposed a handicap on their campaign to recruit trade unionist support. Yet it was no easy problem for Conservatives to accept repeal of the regulatory legislation whose virtues they had insisted on for twenty years. Even in the deliberately progressive *Industrial Charter* of 1947 the party maintained its intention of restoring the principal features of the old Trade Disputes Act.[65] However, before the next General Election this stand was softened to the point of promising to consult the unions on issues where, it was admitted, "Conservatives have strong convictions of principle."[66] Finally, during the 1951 election campaign even this much of the party's attachment to the old law was officially suppressed in the interests of minimizing trade unionist suspicions.[67] In fact, when Labour campaigners seized on the promise to consult before introducing any legislation as only a thinly veiled Tory persistence in the principles of the 1927 Act, Conservatives responded with positive assurances that they accepted repeal. Winston Churchill was now unequivocal: "The Conservative Party has no intention of initiating any legislation affecting trade unions should we become responsible in the new Parliament."[68] For maximum effect, Churchill subsequently repeated the statement, and it was echoed by Sir David Maxwell Fyfe, who had been associated with the framing of Conservative industrial policy and especially suspect in relation to trade union legislation. Maxwell Fyfe became most explicit when he said that the party had concluded that "whether the political levy is paid by contracting in or contracting out is an internal matter" for unions themselves to settle.[69]

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[62] Individual unionists have taken part in Conservative campaigns, and there is a report of one successful parliamentary candidate who emphasized his union activism and was supported on a Tory platform by an official of his union. R. S. Milne, "A West Country Constituency," *The British General Election of 1951* (cited in note 33), p. 217.

[63] *H. C. Deb.*, Vol. 419, cols. 192–307 (Feb. 12, 1946) and cols. 386–490 (Feb. 13, 1946).

[64] From 1946 to 1950 the number of union members affiliated to the Labour party rose from 2,635,346 to 4,971,911. "Trade Unions and Party Politics" (cited in note 56), p. 390.

[65] *Industrial Charter* (cited in note 25), p. 22.

[66] *This Is the Road* (Conservative Central Office, 1950), p. 12.

[67] *Britain Strong and Free* (cited in note 32), pp. 17–18.

Not only was the Conservative Government faithful to this somewhat painful conversion but in its first two years of power it was also abundantly conciliatory to unions. Churchill's selection of Sir Walter Monckton as Minister of Labour was a happy one, since Sir Walter, new to Parliament in early 1951, had neither a political past to live down nor any kind of record of hostility to union interests. On the contrary, he enjoyed a nonpartisan reputation for fairness and ability. Monckton became the symbol of the Conservative Government's policy of proving to the Trades Union Congress that its influence, so direct in the case of the old Labour regime, could also be brought to bear—though in different channels—on the decisions of the new administration.

Conservative regard for the views of union leaders, particularly for the clearly moderate ones, was reflected in other ways as well. For example, following the denationalization of steel, the Government named a principal anti-Bevanite unionist, Sir Lincoln Evans (general secretary of the Iron and Steel Trades Federation), to the full-time post of vice-chairman of the new regulatory Iron and Steel Board, and also selected two other members of the T.U.C. General Council as part-time members of the board. There was a chorus of left-wing protest against the designated unionists for "selling out" to Labour's enemies, and it became necessary to find another trade unionist to replace one of the part-time appointees who withdrew under pressure.[70] But the significant political point was the Conservative success in gaining any appreciable degree of trade union collaboration. The circumstance had not been favorable, since unionists were so clearly being asked to make effective a particular industrial policy which their political party had opposed and had pledged itself to reverse by renationalization at the first opportunity.

Further cooperation of this sort with trade union representatives would still leave Conservatives some distance from the destruction of the class-consciousness that binds the majority of British industrial workers, at least as much as their leaders, to the Labour party. Such a change, if it comes at all, would have to be a very gradual one—perhaps equivalent to a growth in the proportion of the population able to think of itself as middle-class. Of course, that proportion

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[68] *The* [London] *Times,* Oct. 13, 1951, p. 6.

[69] *Ibid.*, Oct. 20, 1951, p. 4. Also Oct. 15, 1951, p. 2.

[70] *Ibid.*, May 22, 1953, p. 8, and May 28, 1953, p. 4.

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is already high (49 per cent classified themselves as middle-class in response to a 1948 British Gallup Poll),[71] and every election study agrees on the significant coincidence of such self-identification with Conservative voting habits and with Conservative political activism. For instance, it has been found that among workers *in essentially similar occupations* those who evaluated themselves as middle-class indicated a much higher percentage of Conservative voting preference than did those who called themselves working-class. This tendency held both for manual workers and for black-coated (or clerical) employees.[72]

Speaking generally of Conservative political support, it is likely that the party would benefit not only from an increasing tendency toward middle-class self evaluation but also from a further growth in the proportion of non-manual workers. Conservative preferences rise markedly in relation to what is called "intellectual status." Thus in one survey while only 31 per cent of the manual workers were Conservative in their voting intentions, the figure rose to 48 per cent among those classified as intermediate and to 52 per cent among non-manualists.[73] Another study has made it clear that non-industrial workers such as clerks and shop assistants constitute one of the largest occupational classifications in which Conservatives can poll a majority vote.[74] The Conservative proportion in this category is not so high as it is among business proprietors and members of the professions, but the absolute numbers are, of course, much larger.

It was this section of the electorate to which the Conservative party was appealing in its most distinctive postwar program: the building of owner-occupied houses. The impact of that particular policy may not be so great in and of itself, but it is indicative of the stake contemporary Conservatism has in the aspirations of the middle class. Political identification with those aspirations, by encouraging home ownership or by other means, is as characteristic of the postwar Conservative party as association with the interests of the working class is of the Labour party. Whether Conservatism enjoys a long tenure of office may depend on the extent to which essentially middle-class attitudes thrive at the edges of the working class.

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[71] Cited by Roy Lewis and Angus Maude, *The English Middle Classes* (New York, 1950), p. 9.

[72] F. M. Martin, "Social Status and Electoral Choice in Two Constituencies," *British Journal of Sociology*, Vol. 3, pp. 231–41, at p. 236 (Sept., 1952). Also Mark Benney and Phyllis Geiss, "Social Class and Politics in Greenwich," *ibid.*, Vol. 1, pp. 310–27 (Dec., 1950).

[73] John Bonham, "The Middle Class Elector," *ibid.*, Vol. 3, pp. 222–30, at p. 227 (Sept., 1952).

[74] A. H. Birch and Peter Campbell, "Voting Behavior in a Lancashire Constituency," *ibid.*, Vol. 1, pp. 197–208, at pp. 201–2 (Sept., 1950).

"NEUTRALISM" IN ASIA*

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Many Americans view "neutralism" as a new type of social disease. Its probable causes: intimacy in some form with communism; its symptoms: mental confusion and moral dereliction; its cure: unknown. This is a somber diagnosis, filled with implications of doom for the "victims." But our warnings and protests have been to little avail. Most "neutralists" have deliberately rejected them, and the "disease"—if that be its proper designation—has approached epidemic proportions in many areas. Among the centers of infection, Asia is certainly the region where "neutralism" has shown its most consistent strength and taken its most diverse forms. And however much they may lament it, Americans must recognize the fact that Asian "neutralism" can be neither ignored nor talked out of existence. In our own interests, therefore, we should seek a more complete understanding of this highly complex force—its causes and effects, and possibly its implications for future American policy. Understanding does not necessarily mean acceptance; it does permit a more accurate calculation of alternative risks, and this is the vital element in decision making.

At the outset, the problems of definition and terminology must be raised. It is not easy to define or describe "neutralism" in such manner as to obtain the largest measure of agreement from all parties concerned. Frequently, the word is intended as an epithet, with connotations similar to those suggested in our opening sentences. In other cases, the expression is used as if it were a symbol of virtue, a literary badge of honor. To attempt a dispassionate definition, it can perhaps be said that Asian "neutralism" in its current usage is a term applicable to those policies and attitudes representing a rejection of extensive commitment to either side now engaged in the cold war. It must be recognized, however, that while most of the Asian "neutralists" would accept this description of their position, many resent the label attached to it. Opposition to the term "neutralism" by those for whom it is intended stems from several considerations. There is the insistence that even when given its most generous interpretation, such an appellation is too negative and too passive. There is also the feeling that it suggests unfairly a lack of responsibility concerning world affairs. Some of the "neutralist" arguments on these points might be set forth briefly as follows: Ours is a position based upon positive actions and equally positive beliefs. Sometimes these coincide with Western desires and interests, sometimes with those of the Soviet Union, on many occasions with those of neither country. Our main objective, of course, is to maintain a position toward international affairs consistent with our own interests and values as we see them. We

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are confident, however, that it is not only a positive position, but one which contains constructive proposals for reducing world tension and developing a firmer basis of cooperation among nations. We have participated in international affairs to the limit of our capacities as long as it was consistent with our clearly-stated views. Indeed, we have achieved some measure of leadership in pressing for a solution to certain current world problems. We have followed the practice of abstention only when any other course would jeopardize our basic beliefs, not because we are afraid to stand up and be counted. The record will bear out the fact that we have not been neutral in terms of issues and principles; rather, we have been independent.

It is the word "independent" which climaxes this defense, for those whom we call "neutralists" generally think of their policies and attitudes not as "neutralism" but as "independence." The above arguments are probably a fair representation of the views held by most of the leaders in India, Burma, and Indonesia—the so-called "neutral bloc" in East Asia. Modified somewhat, they could also be used by most of the individuals and groups espousing "neutralism" throughout Asia, although one of the complexities with which we must deal is the fact that "neutralism" stems from diverse interests and philosophies. It differs greatly in orientation and degree, and knows no single line of defense. The position outlined so briefly above comes closest to expressing some of the views of the moderates—those "neutralists" whose general opinions have the most in common with the values of the Western democracies.

Even so, this defense would not satisfy most Americans, including many who consider themselves sympathetic to the problems of modern Asia. Instead of seeking to present their rebuttal, however, let us turn directly to the basic issues. I shall continue to use the word "neutralism" in quotation marks, for while I do not accept its implications fully, neither do I find an adequate substitute in such a phrase as "independent policy." At the outset, it may be helpful to make a distinction between "neutralism" as a policy and "neutralism" as an attitude. If applied too rigidly, this distinction can be challenged as artificial, but used properly, it is not only a convenient technique to make clear certain major aspects of the problem, but also a method that can be defended in logic and fact. Neither the causal-effect relation between attitudes and policies nor the degree of correlation between the two can be defined by any simple formula. And this is true whether one is referring to an individual leader or to the larger components within a society. It is an error to study "neutralism" without these factors in mind.

"Neutralism" as an official policy in East Asia has thus far been identified primarily with the three countries previously mentioned: India, Burma, and Indonesia. The Indian role, moreover, has been so clearly predominant that it might seem preferable at this point in the analysis to concentrate on India alone and place heavy emphasis upon one man—Nehru. I am willing to make substantial concessions to this approach without adopting it. Indian foreign policy has certainly been the cornerstone up to date for the Asian "neutralist" bloc. Few if any innovations have been introduced by the others, although actions have not always been uniform. And no one would deny that Indian policy contains its strongly personalized elements. Nehru's philosophy and personality—ambivalent and complex—are easily discernible. His influence, moreover, extends far beyond India and is quite apparent in Burma and Indonesia. Is "neutralist" policy in South Asia, then, nothing more than Nehru's policy? The most fundamental answer, it seems to me, must be in the negative. Nehru, for all of his unique qualities, is in a certain sense a type. In this sense, there are many Nehrus in Asia—Nehrus without India, Nehrus without Gandhi, Nehrus, of right and left, with and without power. They are a response to the broad forces which have played upon them and their societies. And to the extent that the interaction of these forces creates similar national and personal problems, it creates also tendencies toward similar approaches. The most basic causes for a receptivity to "neutralism" among certain nations and groups are to be found in this realm; no highly personalized explanation will suffice. And evidence on this score can be garnered not only from contemporary Asia, but also from other eras and societies, as we shall note.

What, then, are the foundations upon which "neutralist" policy in South Asia rests? The Asian "neutralist" would answer this question by invoking that much debated concept, the national interest. It is not necessary here to explore the controversy which has raged over "the national interest" theme. It is sufficient to emphasize as forcefully as possible that the first line of defense for "neutralism" in India, Burma, and Indonesia has been built around this concept. To rely successfully upon such a broad thesis as "the national interest" is an obvious advantage as compared with such alternatives as reliance upon a thesis of class or group interest, or any given ideological adherence. It is also extremely difficult, and yet to a remarkable extent it has been accomplished, thus far at least, in the above countries. Any central explanation must focus upon what might be described as the two massive facts of these societies: first, the recency and nature of the nationalist revolution; second, the serious domestic problems of this transitional period.

The implications of nationalism will be discussed more fully later on, but here it must be noted that the so-called "neutral bloc" of South Asia share both a common timing and relatively common circumstances in their emergence from colonialism. And as a result of these factors, the nationalist argument can reach a level of intensity as an appeal comparable to that of arguments resting upon a thesis of religion or class, with the further advantage of being much more comprehensive in its coverage. While this is a significant aspect of all Far Eastern politics, conditions have given it particular force in the countries under discussion.

With regard to the second factor, it is certainly no exaggeration to describe the general domestic situation in the South Asian countries as critical. Political and economic stability remain to be achieved, and even national unification is incomplete. Economic problems are particularly pressing in India and Indonesia, and no basic solutions have been discovered. In all three of these countries, the political situation is precariously balanced, with the present governments in power representing a middle-of-the-road position and being subject to assaults of varying intensity from both right and left. The moral fervor and political unity achieved in the heat of the independence movement have shown an inevitable decline. Leadership faces the serious problem of combatting moral and political disintegration. And naturally the military strength of the present governments is scarcely equal to the task of preserving order even on the home front; in most cases it is a weak and uncertain element in the political picture. Even so, it is a serious drain upon the limited resources of the society.

Thus the immediate situation in these countries tends to reduce possibilities in the field of foreign policy to two broad alternatives. One is active partisanship in world affairs combined with extensive military and economic support from foreign sources. The other is a policy of international participation strongly conditioned by its possible influence upon the domestic scene and its impact upon the major powers. Both policies involve substantial risks. Any success with the first alternative depends upon such factors as the consistency of action by the major powers; the military feasibility of foreign protection; and, perhaps most important of all, the internal repercussions of dependency and a certain amount of foreign supervision and control. All of these risks, and especially the last, militate strongly against its being adopted at present by such countries as India, Burma, and Indonesia. There is grave uncertainty in Asia as to which general course American foreign policy will follow with regard both to the Far East and to the world; there are equally serious doubts as to the strength of the other Western democratic powers, and about some of their actions. In any case, grave doubts have been entertained as to how adequately and at what cost nations on the continent of Asia could be defended by means of Western power, even if events caused or forced them to consider it desirable. The lesson of Korea may not be a valid one for the future, but at this point it has been an impressive one to many continentals, and it is extremely doubtful whether it would have been less impressive had we scored a greater military victory, in view of the enormous sacrifices of the Korean people. On the other hand, the power of nearby Communist China is now treated as a fact by many Asian leaders besides Nehru.

But the greatest problem to be surmounted, should the first alternative be chosen, would undoubtedly be that of losing control of the nationalist movement. Practically all the statesmen of these three countries are both leaders and prisoners of that movement. At present, it is not merely advantageous to cast political appeals in nationalist terms; it is a necessity. The political struggle in these areas still focuses around the battle to capture the nationalist symbols. Each competing group must claim to have inherited that revolutionary movement which had as its central emblem the struggle against Western imperialism. In South Asia, such epithets as "imperialist" and "supporter of Western exploitation" are as dangerous as terms like "fellow-traveler" and "Communist" in America. Thus a foreign policy which can be easily defended as "independent" is the most potent weapon available to men like Nehru and U Nu against some of their opponents, particularly the domestic Communists. Moreover, any other policy would represent a break with a tradition composed of concrete pronouncements and actions as well as generalities. An examination of the numerous foreign policy statements of the Indian Congress party during the period of British rule reveals clearly the strong element of continuity involved in present Indian foreign policy. In this connection, one must not forget that leadership for the most part is in the hands of first generation "revolutionaries," including men whose prestige in South Asia is connected with a lengthy public record on most of the current issues. In this as in other respects, the colonial era still casts a long shadow over the policies of people who have just gained political independence.

Hence the second alternative, despite its obvious risks, becomes the most natural choice, and in the eyes of present leaders the most reasonable. Its dictates are simple but compelling. It must take account of internal weakness and the urgent nature of domestic problems. Thus, foreign partisanship, at either the individual or the national level, is regarded as a development likely to produce further cleavages in an already confused situation. And under the circumstances foreign policy must be the pillar of strength, capable of being sustained on the basis of its own emotional and political appeal, so that the governments in power can fight with some advantages the inevitable crucial battles over domestic policy. Involved in this second alternative also is the necessity for appraising in realistic fashion power abroad, both actual and potential, and then seeking to reduce any threats by relying largely upon a policy of conciliation and compromise, at least until that time when military strength and internal stability may permit the consideration of other approaches. But it need not be a policy resting upon moral suasion and compromise alone. There is also the possibility of creating a position of power not through military strength but rather through a strategic political position attuned to the nature of power politics in the modern world.

A very considerable part of "neutralism" in its official policy forms may be explained in these terms. And actually, when Americans read their own history, they can find interesting parallels. When Citizen Genet threatened to disrupt further the precarious political situation in post-revolutionary America and plunge this weak and struggling country into a large-scale conflict between major powers, many of our governmental leaders registered their emphatic opposition. It was during this period that President Washington issued his famous Neutrality Proclamation of 1793, an important landmark in the history of early American diplomacy. Our military strength was negligible; our economic problems were critical; our political cleavages were serious, and they were being exacerbated by the threat of violent partisanship in America over European politics. There were those who argued convincingly that we could not stand by idly in the struggle between democracy and autocracy in Europe. Men like Genet were doomed to bitter disappointment because their cause was not given the full measure of support from our leaders which they thought it deserved. There is no doubt that in a man like Hamilton ambivalence toward the democratic creed—and particularly toward such a movement as the French

Revolution—played an important part in causing the rejection of such proposals. Indeed, since a Hamilton had his counterpart in a Jefferson, the internal balance of foreign favoritism was an additional drag upon official partisanship. Yet essentially the decision was based upon the realities of American weakness; the concept of non-involvement with the major powers was argued most forcefully by reliance upon the thesis of the national interest.

It was this concept that has been termed American isolation, and despite the fact that American attitudes were much more unified on behalf of the democratic creed than those of modern Asia, our policy of official aloofness from European causes and conflicts remained relatively stable throughout the nineteenth century. Not only in its major facts, but also in many of its nuances, this era of American diplomacy bears a certain resemblance to the current situation in the Asian "neutralist" states. For instance, our policy naturally placed heavy emphasis upon American moral superiority and even used the thesis that old world evils were almost indistinguishable in kind and degree. Perhaps we can appreciate today how much these tendencies infuriated the people of Europe.

One must resist the temptation to draw a closer parallel here than actually exists. There are differences and some of them are very important. It is not possible, of course, for the contemporary South Asian societies to follow a policy of isolation, even to the extent that this term is applicable to early American policy. This is the twentieth, not the nineteenth, century and we have now a much more interdependent world. In a sense, however, the present foreign policies of India, Burma, and Indonesia constitute a kind of modern substitute for the outmoded isolationist approach that contains some of its elements. "Neutralism" is a basic technique of limiting involvement with the major powers and thereby avoiding the kind of crisis which such involvement might well produce. In a situation where isolation in its old forms lacks political realism and is also incompatible with the ideological tone of the Asian revolution, and yet retains some of its historic justification, the present policy offers a solution fairly consistent with both the interests and attitudes of these societies. This policy seeks to protect and advance so-called "national interests" in the international arena while at the same time seeking to retain, as much as is possible in our present world, safeguards against heavy involvement with the great powers of today. It attempts this by avoiding a pattern of consistent alignment on one side—by using abstention and "concurring opinions" (to borrow a phrase from our judicial system), so as to establish a position which cannot be identified completely with either power center. Naturally, factors of ideology and attitude lend essential support and make such a policy feasible, but it is important to establish first its basis in *real politik.*

"Neutralist" exponents do not push the claim that their policy will prevent involvement should another world war occur, although popular hopes in this direction generally accrue to their advantage. Much of the nineteenth-century optimism that participation in war could be avoided has gone with the tide of recent events, and the classical defense of isolation on this score represents a relatively minor part of "neutralist" arguments. The present defense of "neutralism" is that it can help prevent war. A substantial part of this theory is based upon the old balance of power theme, though that phrase is rarely used. It is the "neutralist" contention that we now have a bi-polar world and that this represents the most dangerous political form in terms of reducing tensions and avoiding conflict. Most "neutralists" like to consider themselves a "third force" holding a position that can save the world from self-destruction.

The "third force" concept deserves close examination, so important is it to the general attitudes and actions of all "neutralists." Once again, our initial discussion will revolve largely around its strategic implications, with the vital ideological-attitude factors reserved for a later point. Again, the problem of power is centrally involved. The idea of a "third force" can be attractive as a method of developing influence and power in the international scene despite internal conditions of great weakness. The political advantages of non-commitment—the power of the floating vote—are not inconsiderable under contemporary conditions. In addition, there is the prospect of becoming an important channel of communication between major power blocs and the initiator of both the ideas and institutions of international compromise. If these possibilities could be translated into realities, it would be the supreme vindication for leaders who have only recently emerged from the status of subversives. And like most leaders, these are not men without ego and ambition. Moreover, the prospect of importance is a great stimulant to the society as a whole, coming as it does so soon after the colonial era and the complexes produced thereby.

The "third force" idea is also an ally of regionalism, an objective of both historic and current importance to many people in the Far East. In its indigenous forms, the drive for Asian regionalism has been closely connected with the struggle against Western control. Under Japanese aegis, such slogans as "Asia for the Asians" and even "The Greater Co-Prosperity Sphere" had potency because of this fact. But now the concept of regionalism has new and dynamic implications. Many Asians would like to think of the "third force" as a group of nations recently freed from colonial status which together with peoples still under foreign control would act in concert on the international level. Such a union, they believe, can serve as a formidable pressure group to secure justice and recognition for its members. Actually this is an idea that goes beyond regionalism in many cases, to conceive of incorporating societies from diverse areas facing common problems of timing and development. Its basis for political unity supposedly lies in common nationalist aspirations and opposition to dictation by major powers, and in its common economic interests in such problems as technological development and safeguards against foreign exploitation. In some respects, the so-called "Arab-Asian bloc" has symbolized the bond between a "third force" and a "regionalism" of under-developed societies. The record of this group, together with the growing Asian interest in the African nationalist movements, has been hailed as evidence of the practicality of such a plan.

It is not difficult, of course, to discern many serious obstacles to this theory, especially as it is spelled out by some of its supporters. Among the "under-developed" and "late-developing" societies, there are important differences in attitudes and problems; some of these have been graphically depicted both through historic rivalries and recent episodes. There is no inherent asset for regionalism in common problems, particularly those of an economic nature; they breed competition as frequently as cooperation, with the latter usually more dependent upon diversity. Moreover, it is impossible to conceive of such a group as a society of political equals, and there are already three potential leaders in Asia alone: India, China, and Japan. Problems of power and influence among these countries are likely to contribute at least as much to disunity as to unity. Despite these factors, it is easy to understand why there is a great appeal in the dream of a union of the "suppressed peoples" directed in many senses against the West, especially against what are considered Western excesses and prejudices. And whatever the deterrents to its complete realization, this dream will undoubtedly continue to find some forms of concrete expression. Certainly it has provided a powerful stimulus to the idea of a "third force" and the general policy of "neutralism."

Already we have moved toward a discussion of attitudes, and the preceding comments may serve as the transition. In this connection "neutralism" must be viewed at its broadest and most complex level, one encompassing philosophy, ideology, prejudice, and emotionalism. The setting can no longer be restricted to a few countries, but must extend to the whole of the Far East and, by inference, to many other areas as well. At the beginning, one must admit that there is no easy method whereby every pertinent factor can be included and assigned its appropriate weight. It may be wise to start with an attempt to relate to the problem three comprehensive forces which have been so important in contemporary Asian thought and life: the forces of eclecticism, nationalism, and Marxism.

The first of these, eclecticism, might be called the "tolerant component" of the modern Far East. It is deeply imbedded in the entire traditional background, and finds its current expressions in both the philosophies and the institutions of Asian societies. The quest for the greater harmony, for the complete synthesis of conflicting ideas, is still a primary objective. Challenges, to be sure, have not been absent in the modern period. Whatever its ultimate possibilities, Western science in its philosophic reaches has thus far been mainly the science of differentiation, with an emphasis upon empirical research aimed at identifying and categorizing the vast body of fact and ideas. Tendencies toward exclusivism have gained considerable strength from this trend. Out of the process of rigid logical and value distinctions, theories essentially exclusivist in nature emerged. If Western society has been generally characterized by exclusivism at the level of individual theories, it has, by the same token, emphasized vigorous competition among such theories, rather than placing any great premium upon harmonization. And certainly, in their impact upon Asia, Western ideology and religion have presented the case for such competition and the necessity for rigorous selectivity in very powerful terms. This has had a significant influence, and in fact the area is not without some subordinate traditions which lend support.

At the same time, however, the nature of modern Asian problems and certain recent trends in the West itself have served to sustain the eclectic tradition in general, and actually increase its appeal in some important respects. The Asian problem of adjustment to modern Westernism is the largest and most complex problem of synthesis that has ever faced these societies. The difficulties of adopting Western patterns intact and the impossibility of duplicating earlier Western evolution have strengthened the conviction among many Asians that they cannot use the old roads to reach their objectives, but only the old implements used to build those many roads, now to be borrowed from the diverse Western sources and refashioned into a uniform set of equipment for future tasks. If there is a fundamental logic in this position, there is also the risk of very great confusion at both the academic and the operating political levels on such issues as basic values and the degree to which seeming incompatibles can be rendered compatible. To many of us, this type of confusion is an impressive aspect of the Asian scene, ranging in form from simple naïveté to the tormented ambivalence of some of the most powerful minds in the Far East. But perhaps the supreme irony lies in the fact that most Asians do not recognize the degree to which the West now shares in this problem. The reaction here against exclusivism has been compounded out of many forces, but essentially it comes from the pressing necessity of developing new approaches to current problems, approaches involving synthesis and running similar risks of confusion. Still, Asia sees us—and particularly America—largely in the old image, the image of a rigid, inflexible society governed by a set of exclusive principles, and basically intolerant whether of people or ideas. Communist interpretations of us have certainly contributed to this belief; their attempt to posit our rigidity as the only alternative to theirs often produces a firmer desire on the part of Asia to avoid both if possible. But our interpretations of ourselves are often a great disservice to truth and to our own interests; if we were to take our stand with the concept of selective synthesis more positively, there would still be differences, some of them basic, but the real issues could be more easily posed.

The preceding discussion is closely connected with the psychology of "neutralism." The tendency of the "neutralist" is to regard each contemporary Western ideology as in and of itself inapplicable, and to see all as having a common denominator in their absolutist base. The commitment, therefore, to any specific ideological position as reflected either through a single Western nation or through a group of allied countries, is limited. There is a natural urge to maintain independence toward political and ideological lines that are considered in some measure artificial, and certainly incomplete. But complementing this critical attitude is a kind of broad tolerance toward rival ideologies which many Western liberals feel is indiscriminate. In this connection, I would venture the somewhat heretical view that in an important sense the bent of contemporary Asia is more practical than ideological, to the extent that such a distinction has validity. The primary test of an idea is its success in the practical field of governing, not its inner consistency or its adherence to the body of thought from which it sprang. There is, to be sure, a strong element of conflict in some cases between the desire for ideological consistency and policy defenses couched in terms of "ideological purity" on the one hand, and the urgent necessity for pragmatic action at the policy level on the other. But it is the latter course which largely governs actual policy in Asia, including its Communist as well as its non-Communist spheres.

If eclecticism can be called in some respects the "tolerant component" of the modern Far East, then nationalism is the "intolerant component." This is not to deny the Asian nationalist movement its justification and its quota of laudable goals. Nor is it to ignore the fact that Asian nationalism in many of its forms is striving for some type of synthesis with internationalism. It is simply to make the point that Asian nationalism like nationalism everywhere rests centrally upon an emotional appeal with hate, prejudice, and general irrationality playing an important part. And in connection with Asian nationalism, two facts are significant in analyzing "neutralist" attitudes. First, it has been a movement directed quite naturally against the West. Secondly, in its "progressive" forms, it has had considerable stimulus from Marxism in general and communism in particular. To mention this latter fact is to introduce the third and final comprehensive factor relating to Asian "neutralism."

It is obvious to anyone that nationalism is the only political movement that has approached mass proportions throughout modern Asia. It is also a movement dominated by the concept of a counterattack against Western power and attitudes of superiority; in recent decades, this attack has been fierce, unrelenting, and operating at all levels of sophistication. It still contains some of the most appealing symbols for the Asian mind. This is partially because they are symbols with continuing validity. But in any case the recency and the intensity of the attack make difficult any re-evaluation of the current Western position which would give full credit to the West when credit is due, and would raise before the public the more recent evidences of Communist imperialism. Consequently, the Western threat in both its political and its economic forms still looms up before many Asians, including almost all "neutralists," as the most immediate threat to be faced; as compared with it, the dangers of communism, and particularly external Communist aggression, are frequently considered remote. The term "imperialism" is still reserved almost exclusively for the West; even when the native Communists show sufficient power to make themselves respected or feared, the movement is viewed largely as an internal problem and a part of the indigenous revolution.

Actually, it is possible to make two broad divisions in the Asian nationalist movement, with reference to groups stemming from it. The first group might be called the traditionalists. In seeking to defend their society against the onslaughts of Westernism, they have relied largely upon traditional values and presented a defense that is distinctly anti-modernist. Their attack has ranged broadly over the fields of urbanism, commercialism, liberalism, and secularism. Their portrait of the West has placed its emphasis upon the surfeit of materialism and the paucity of cultural or spiritual values, and it has achieved particular depth of feeling when dealing with American society. It must never be forgotten that "neutralism" has its "right-wing" as well as its "left-wing" derivations; in Asia, this can be found wherever "neutralism" exists as an important force.

The traditionalist approach has complemented in a sense the attack of the modernists upon the West. If the latter group have accepted as desirable many of the end-products of Western civilization, such as industrialization and centralized power, they have been equally vigorous in opposing what they consider to be the use of these by the West against their own societies. And in many respects they have been strongly influenced by Marxism. The concepts of economic exploitation and of the state as an instrument of oppression fitted well into the pattern of nationalist attack upon the Western powers. Capitalism has borne odious connotations in the Far East partly because it was under simultaneous attack by both the traditionalists and the modernists; in Asia, certain forces of the Western seventeenth and twentieth centuries seem almost to be joined together under anti-imperialist banners.

In a broader sense, however, the influence of Marxism in Asia, especially among the intelligentsia, must be ascribed to the fact that Marxism has had greater applicability to the Asian scene than any other Western philosophy. The refinements of modern Western economic and political thought have generally been tailored to the problems of societies reaching increasingly complex levels within the industrial process. Thus the issues have been more and more removed from those societies whose basic economic and political forms are still relatively simple as related to this particular stage. The West has had the greatest opportunity to reveal the inadequacies of Marxism, with regard both to its initial premises and to its subsequent evolution. But in Asia Marxism has not only achieved a measure of integration with the nationalist revolutionary movement; it has also benefitted from the degree to which some of its central theses fit this stage of Asian development. As a result, while only a small portion of the Asian intellectuals are Communists, a very substantial number are deeply influenced by Marxism. And the intellectuals are important in the Asian "neutralist" movement not only because they are well represented in its ranks, but also because they are the leading publicists in many Asian countries, interpreting to the people their own and foreign societies.

Thus far we have been considering the broad forces of eclecticism, nationalism, and Marxism, in an attempt to discern the various sources of "neutralist" thought. Though these are what might be called the massive factors in the picture, there are other elements of importance. Certainly one is the great weariness of conflict and the omnipresent fear of involvement in another war. This is a widespread sentiment in the Far East, and while it does not represent automatic support for "neutralism," there can be no doubt that many consider the risks increased under conditions of open dependence upon or alliance with the United States or any bloc of Western powers. Another aspect of "neutralist" thought is related to economics: there is an inevitable desire on the part of most Asian business groups, and particularly those in Japan and overseas Chinese communities, to have trade and financial relations with all possible sources. While this does not always lead to a "neutralist" attitude, it frequently contributes to a position of political aloofness on the major issue here posed. And it must not be forgotten that such a position has had a certain historic rationality for the Asian business class. A basically apolitical attitude or opportunism has often been the staff of life for the Far Eastern entrepreneur. Another factor lies in the political realm, and is perhaps connected more with policy than with attitude, though in reality it is an excellent representative of that element of fusion between the two. "Neutralism" in Japan, for instance, is promoted by some socialist groups because it appears to be a promising issue by which to attack those in power. This is not to belie the obvious sincerity of many Japanese "neutralists," but merely to underline the fact that policy-attitudes are affected by the degree of responsibility held and by the dictates of opposition strategy. And a final factor—to which various names might be applied—is, basically, indifference or ignorance. The greater number of "common men" in Asia are, for all real purposes, "neutralists" by default; their only deep commitments are to the immediate problems of livelihood and personal tension which contact with modernism has introduced. Mass indoctrination on an intensive scale has just begun in parts of the Far East, and in any case is likely to follow government policy in most areas.

Implicit in this analysis of "neutralism" both as a policy and as an attitude has been the fact that the causal factors presented have application in regions other than Asia. The emphasis, to be sure, would vary with different areas, and some points would have to be modified or omitted, but in spite of diversity and complexity "neutralism" in all parts of the world has its connecting links.

There remains the necessity of discussing briefly the implications of Asian "neutralism" to American foreign policy. First, it might be well to note the major points of opposition between the United States and most of the "neutralists" as they relate to current policy problems. Perhaps the most important cleavage over the past few years has involved our China policy. When Nehru said recently that the rise of China as a great power in Asia was the most significant fact of the postwar period, he was undoubtedly echoing the sentiment of a great number of Asians, including almost all of the "neutralists." Chiang Kai-shek and the Kuomintang have been written off by them as lost causes, and American policy is considered both unrealistic and an obstacle to reducing tension in the Far East. There is a strong feeling that realities demand the recognition of Communist China as the *de facto* government of the Chinese people, and there is an equally strong belief among the "neutralist" group that the nationalist element of the Chinese revolution will predominate, making China independent of Soviet power. This is an issue upon which both the stakes and the emotions run high, and the crucial facts are subject to widely varying interpretations. There is also opposition to American policy toward Japan. The common complaints are that we not only have failed to democratize Japan but now threaten to drive her down the path of renewed militarization. The Japanese "neutralists" have led this attack, supported of course by the Communists, and have given ammunition to "neutralists" in all parts of the Far East.

Finally, there is opposition to current trends of American policy in South and Southeast Asia; to the substitution of MSA with its military strings for the original Point Four Program; to the prospect of any military alliance in this area backed by American power; and to what is regarded as our support for French and British colonialism in this area.

Behind all of these objections there lie three focal points of difference between ourselves and the Asian "neutrals." They do not agree at present with our position that Russian-Communist aggression is a most serious and imminent threat to them. They believe that the danger of communism is primarily an internal threat based upon failures at home which might allow the Communists to move into a vacuum. And they believe that this threat, to the extent that it exists, can be best met by following a "neutralist" foreign policy. Secondly, the "neutrals" do not feel that our policy, on balance, will reduce world tensions; some would insist that it increases the risks of war, and this is their greatest fear. Finally, they are skeptical as to whether we understand or even approve of what they call the Asian revolution, and whether we are willing to modify our position in any significant respects to accommodate what they consider to be their interests.

All of these differences—both those on concrete policies and those on more fundamental points—indicate clearly that there is little likelihood of attaining complete harmony, and there is no point of talking in such terms. "Neutralism" is here to stay, not only as the official policy of certain countries, but also as an attitude in almost every country outside the Communist bloc (where there is probably more violent partisanship for as well as against us than anywhere else). Even among some of our allies, there are strong "neutralist" elements and, what is even more important, there is official agreement with certain of the specific positions which the "neutralists" take.

This suggests one of the objectives toward which we should strive: namely, to prevent difference from becoming antagonism, as regards either our allies or the so-called "neutrals." We cannot necessarily change their positions and we cannot always accommodate our position to theirs, but we can exercise more self-restraint with respect to the use of epithets which contain charges of stupidity, immorality, or cowardice. Admittedly this is difficult in a democratic society. It requires more leadership and courage on the part of our government than has yet been shown. If it can be achieved, however, it will pay dividends both to ourselves and to the world. We must discard the time-honored American thesis that all those who are not for us are "agin" us.

Moreover, we must interpret our society and its trends in line with the realities of the last three decades, not in conformity with the platitudes of the last century. We cannot hide our differences from the rest of the world, nor our major shortcomings. These have been thoroughly explored by our opponents, and usually exaggerated. The prevalence of fear in the United States, however, and various other signs of insecurity are very real, and until we conquer them we will be placed under severe handicaps in our relations with other people. There are some honest and intelligent "neutralists" in the Far East who sincerely believe that the United States has become a fascist society. It is easy to blame the Communists for this, but the fault also lies within ourselves. We have done a fairly effective job of hiding some of the encouraging and dynamic facts that might aid the "neutralists" in obtaining a more balanced picture of American society. The United States is too frequently presented in ultra-conservative terms, and through clichés that are considered politically safe here at home. This fits Communist tactics perfectly.

There remains, of course, the question of policy itself, for in the final analysis this is the crucial test. It is not the purpose of this essay to present a detailed discussion of our foreign policy, especially as it relates to specific areas and issues. The "neutralist" problem, however, points up clearly the major dilemma confronting the American people. It is simply the question of whether we will accept the premises of international organization. We cannot hope to control all of the decisions of the United Nations, even though we have at present great advantages over the Communist bloc. Some important votes will go against us, despite our most energetic efforts. In our desperation, we may threaten secession with temporary effect, but as a long-range tactic it cannot possibly work. It will not only have a devastating effect upon our allies, thereby increasing "neutralism" in its most hostile forms; it will also develop further among ourselves the unhealthy psychology of self-righteousness, omnipotence, and omniscience to which we have been prone for understandable reasons. This psychology may be compatible with totalitarian leadership, and even necessary, but it can only destroy leadership in an association of free nations. And if this tactic will not meet the test of success, it is also possible that it will not meet the test of justification in terms of the correctness of our stand on the particular issue involved. The mark of liberalism has always been the acceptance of the possibility of error; there is no reason why we should abandon this tradition when operating at the international level.

Nor can we build further upon a psychology of fear and defense with any great hope of success. There are real dangers from modern totalitarianism, and these should not be ignored. Moreover, it has probably been necessary to approach our own people as well as others in this vein, so as to call forth sacrifices immediately which might not otherwise have been forthcoming. But now we have reached the point of diminishing returns both at home and abroad. Many of the repercussions in this country are alarming. The effect overseas has been to give the Communists almost all the advantages of the initiative. It has left us open to Communist strategy in the form of a broad peace offensive for which we have been too often in the past both politically and psychologically unprepared. We are now making certain attempts to meet this problem, but whether they will be sufficient is still unclear. The future power and tendencies of "neutralism" in Asia and elsewhere will be strongly affected by our ability to add more dynamic and positive qualities to the old approach. "Neutralism" will also be affected, of course, by Communist moves and by internal developments in the various countries themselves. But if our role is not the sole determinant, it is an important one, and this should be considered carefully in choosing our course of action.

CONSTITUTIONAL LAW IN 1952–1953

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There was no change in the personnel of the Supreme Court during the 1952 Term. But following the close of the Term, on September 8, 1953, Chief Justice Fred M. Vinson, who had been appointed to the Court by President Truman in 1946, died unexpectedly at the age of 63. To replace him President Eisenhower gave a recess appointment to Governor Earl Warren of California on October 2. The new Chief Justice was sworn in on October 5.

Two important developments in the constitutional law field during the period under review occurred outside the Court. One was the publication by the Government Printing Office, in 1953, of a newly revised annotated *Constitution of the United States*,[1] prepared by the Legislative Reference Service under the editorship of Edward S. Corwin. The annotations come down to June 30, 1952. The last annotated Constitution was published in 1938 under the editorship of W. C. Gilbert. The new work, an ample book of about 1400 large pages, is indispensable for students of American government.

Noteworthy also was the appearance of the first two volumes of William Winslow Crosskey's monumental study of the American Constitution, under the title of *Politics and the Constitution in the History of the United States*.[2] Professor Crosskey, who is a member of the faculty of the University of Chicago Law School, undertakes to prove, through the marshalling of a prodigious amount of contemporaneous evidence, that the framers of the Constitution intended to create a unitary and not a federal system of government. He believes that the Founding Fathers thought they were giving Congress a general legislative power over all national subjects, and that in addition the Supreme Court was intended to have general and final jurisdiction over all common-law questions heard in the state courts. If Crosskey is right, then every extant text on American government will have to be rewritten. The book is being discussed in unusual detail in the law reviews, other learned journals, and popular publications.[3] On the whole, historians and political scientists seem to be far less

[1] Printed as Sen. Doc. 170, 82d Cong., 2d sess. The price is $6.25.

[2] University of Chicago Press, 1953, 1410 pp.

[3] The Autumn, 1953 issue of the *University of Chicago Law Review*, Vol. 21, pp. 1–92, contains four full-length articles on the Crosskey opus, written by Abe Krash, Charles E. Clark, Charles Fairman, and Walton H. Hamilton. For other reviews and review articles see: Arthur L. Corbin and George D. Braden, *Yale Law Journal*, Vol. 62, pp. 1137–54 (June, 1953); James A. Durham, *California Law Review*, Vol. 41, pp. 209–29 (Summer, 1953); Roger Paul Peters, *Notre Dame Lawyer*, Vol. 28, pp. 307–32 (Spring, 1953); William B. Jeffrey, Jr., *Louisiana Law Review*, Vol. 13, pp. 638–41 (May, 1953); Allan Nevins, *New York Times Book Review*, May 31, 1953, p. 7; Carl B. Swisher, *Saturday Review of Literature*, Vol. 36, pp. 33–34 (April 4, 1953); Lucius Wilmerding, Jr., *Political Science Quarterly*, Vol. 68, pp. 467–70 (Sept., 1953); Charles E. Clark, *The Nation*, Vol. 176, pp. 505–8 (June 13, 1953); C. P. Nettels, *Chicago Sunday Tribune* April 19, 1953, p. 9; Daniel J. Boorstin, *Commentary*, Vol. 16, pp. 602–4 (Dec., 1953); and Robert G. McCloskey, this Review, Vol. 47, pp. 1152–58 (Dec., 1953).

enthusiastic than legal scholars. The present writer is deeply impressed by the author's industry, but is not convinced of the soundness of his thesis or of his underlying constitutional theory.[4] Nevertheless, no serious student of American constitutional law can possibly ignore this study, which is full of extraordinary historical insights.[5]

The Supreme Court disposed of 1278 cases during the 1952 Term. There were 104 signed and six *per curiam* opinions. During the previous Term there were only 83 signed opinions. Of the 110 dispositions with full opinion, only 24, or 22%, were unanimous. Of 61 dispositions by memorandum order, 41, or 67%, were unanimous. In all, 198 cases were decided on the merits. Of these, 49 came from the federal district courts, 86 from the courts of appeals, four from specialized federal courts, and 59 from state courts. Of these cases, 88 came up on appeal, including three on certificate from courts of appeals, and 110 came by way of certiorari. The record for certiorari followed the pattern of recent years.[6] On the appellate docket the Court denied certiorari in 540 cases, and granted 104 petitions, or 16.1% of the total (15.2% in 1951). As for the miscellaneous docket, the Court refused petitions for certiorari in 429 cases, and granted only eleven, or 2.5% (4.7% a year ago). Furthermore, the Supreme Court dismissed appeals in 36 cases, 19 for lack of a substantial federal question. In the previous Term appeals were dismissed in 50 cases, 37 because a substantial federal question was wanting. Again the discretionary element inherent in the Court's so-called compulsory jurisdiction is to be noted.

Dissenting opinions during the 1952 Term numbered 89 (as compared with

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[4] See my review in *The Progressive*, Vol. 17, pp. 36–39 (Oct., 1953).

[5] For other writings during the period under review dealing with various aspects of constitutional and Supreme Court history see: *The Words of Justice Brandeis*, ed. Solomon Goldman (N.Y., 1953); Ernest R. Bartley, *The Tidelands Oil Controversy* (Austin, Texas, 1953); Roscoe Pound, *The Lawyer from Antiquity to Modern Times* (St. Paul, 1953); Arthur T. Vanderbilt, *The Doctrine of Separation of Powers and Its Present-Day Significance* (Lincoln, Nebraska, 1953); Note, "Judge Spencer Roane of Virginia: Champion of State Rights," *Harvard Law Review*, Vol. 66, pp. 1242–59 (May, 1953); Edward F. Waite, "How 'Eccentric' was Mr. Justice Harlan?," *Minnesota Law Review*, Vol. 37, pp. 173–87 (Feb., 1953); Donald G. Morgan, "The Origin of Supreme Court Dissent," *William and Mary Quarterly*, Vol. 10, pp. 353–77 (July, 1953); Carl B. Swisher, "Needed: A Rededicated Supreme Court," *The Johns Hopkins Magazine*, April, 1953, pp. 3–14; Arthur E. Sutherland, "The Supreme Court and the General Will," *Proceedings of the American Academy of Arts and Sciences*, Vol. 82, No. 4, pp. 169–97 (April, 1953); Eugene V. Rostow, "The Democratic Character of Judicial Review," *Harvard Law Review*, Vol. 66, pp. 193–224 (Dec., 1952); Eugene C. Gerhart, "A Decade of Mr. Justice Jackson," *New York University Law Review*, Vol. 28, pp. 927–74 (May, 1953); Alpheus T. Mason, "The Supreme Court: Instrument of Power or Revealed Truth, 1930–1937," *Boston University Law Review*, Vol. 33, pp. 279–336 (June, 1953); Merlo J. Pusey, "Chief Protector of the Constitution," *N. Y. Times Magazine*, September 20, 1953, pp. 13, 32–33. See also: *Judicial Administration and the Common Man*, *Annals of the American Academy*, Vol. 287 (May, 1953).

[6] See Fowler V. Harper and George C. Pratt, "What the Supreme Court Did Not Do during the 1951 Term," *University of Pennsylvania Law Review*, Vol. 101, pp. 439–79 (Jan., 1953); Robert L. Stern, "Denial of Certiorari Despite a Conflict," *Harvard Law Review*, Vol. 66, pp. 465–72 (Jan., 1953).

73 a year ago); Justice Douglas led all the rest with 33; Justice Frankfurter wrote 15, and Justices Black and Jackson each filed 13; Justice Minton wrote six, Chief Justice Vinson three, and Justices Burton, Clark, and Reed each wrote two. Of the 32 concurring opinions, Justice Frankfurter contributed 14, three Justices wrote four each, two Justices two each, two Justices one each, and the Chief Justice none. In all cases decided on the merits, whether with full opinion or by memorandum order, Justice Douglas, with 62 dissenting votes, and Justice Black, with 49, were most frequently in disagreement with the Court's majority. Justice Frankfurter cast dissenting votes in 31 cases, Chief Justice Vinson in 21, and Justice Jackson in 20. At the other extreme, Justice Clark dissented only six times; Justice Reed dissented eleven times, Justice Burton 13 times, and Justice Minton 15 times. Six cases were disposed of by an equally-divided Court. In addition, in connection with memorandum orders denying petitions for certiorari or disposing of miscellaneous applications, Justice Black dissented 25 times, Justice Douglas 22, Justice Reed five, and Justice Jackson two. In keeping with his custom, Justice Frankfurter filed explanatory "memoranda" in three instances.[7]

Cases involving some of the nation's most notorious defendants, the Rosenbergs, Harry R. Bridges, and Alger Hiss, reached the Supreme Court during the 1952 Term, but none involved substantial constitutional questions. Hiss filed a motion for a new trial on January 24, 1952, on the ground of newly-discovered evidence, before Judge Henry W. Goddard, of the federal district court for the Southern District of New York. Judge Goddard wrote a lengthy opinion in July in which he held that the newly-discovered evidence was not such as would, if presented to a jury, probably result in an acquittal.[8] The Court of Appeals for the Second Circuit affirmed unanimously, without opinion, in January, 1953,[9] and the Supreme Court denied certiorari in April.[10]

The Bridges case was one of an incredibly large number of legal maneuvers which began in 1936.[11] Harry Bridges, who immigrated from Australia in 1920, had been naturalized in 1945. In 1949, he and his two character witnesses were convicted of procuring a naturalization certificate through fraud, the fraud consisting in knowingly making false statements to the effect that Bridges was not a Communist. By a 4–3 vote, the Supreme Court held that the Wartime Suspension of Limitations Act did not suspend the running of the general three-year statute of limitations in Bridges' case.[12] The majority decided that the wartime act applied only to frauds of a pecuniary nature or frauds concerning property, relying upon legislative history and the rule that a statute of limitations dealing with crimes ought to be construed liberally in favor of a "policy of repose." The Court also held that the wartime act was limited strictly to offenses in which defrauding the government was an essential ingredient, and that Bridges' offense was not of this character.[13]

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[7] See especially *Rosenberg* v. *United States*, 344 U.S. 889 (1952).

[8] 107 F. Supp. 128.

[9] 201 F. 2d 372.

[10] 345 U.S. 942.

[11] A complete log of all the legal proceedings in the Bridges saga is given by Milton R. Konvitz, *Civil Rights in Immigration* (Ithaca, N.Y., 1953), pp. 114–20. See especially *Bridges* v. *Wixon*, 326 U.S. 135 (1945).

[12] *Bridges* v. *United States*, 346 U.S. 209 (1953). The Court of Appeals for the Ninth Circuit had ruled on a variety of constitutional issues, including double jeopardy and due process questions, 199 F. 2d 811, but the Supreme Court's grant of certiorari limited drastically the scope of review, 345 U.S. 904.

The most widely-publicized litigation of the year involved the Rosenbergs, who were convicted in a federal district court, on August 17, 1950, of violating the Espionage Act of 1917 by communicating atomic secrets to Russia in time of war. They were executed on June 19, 1953. In the interim they had their day in court, indeed many days in many courts. It must suffice here to note that after full review by the Court of Appeals for the Second Circuit,[14] the Rosenberg case was considered by the Supreme Court seven times. On June 15, the last day of the Term, the Court denied an application for a stay of execution.[15] On the same day, meeting in a Special Term, the Court denied a petition for an original writ of habeas corpus.[16] Then, on June 17, Justice Douglas granted a stay of execution to counsel who had never before been employed by the Rosenbergs,[17] on the ground that a new and "considerable" question was raised. That question was whether the case should not have been prosecuted under the Atomic Energy Act of 1946, which provides that the death penalty can be imposed only upon recommendation of the jury. Without ruling on the merits, Justice Douglas merely held that the issue was not frivolous, but "a substantial one which should be decided after full argument and deliberation."

The uproar touched off by Justice Douglas' stay subsided when the Court reconvened in Special Term on June 18, on the application of the Attorney General, and vacated the stay by a 6–3 vote.[18] Chief Justice Vinson announced that the full Court had considered the new issue on its merits, and found it not to be a substantial question. He had no doubt that the Atomic Energy Act did not repeal or limit the Espionage Act. Justice Jackson pointed out that the *ex post facto* principle forbade application of a 1946 statute to acts which took place in 1944 and 1945. He also expressed disapproval of the irregular manner in which the new issue was originally presented by lawyers not authorized by the Rosenbergs. He thought the elbowing out of "able and zealous counsel" of the defendants' own choice presents "a threat to orderly and responsible representation of accused persons." Justice Clark discussed the more technical question of partially overlapping statutes, pointing out that repeal of statutes by implication is not favored, and that where two statutes deal with the same subject, the rule is to give effect to both if possible.

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[13] In *United States* v. *Grainger*, 346 U.S. 235 (1953), by a 5–3 vote, the Court held that an attempt to obtain payments from the Commodity Credit Corporation based upon knowingly false allegations of purchases not in fact made, and a false certification of a price actually paid, was a fraud covered by the Wartime Suspension of Limitations Act because the fraud was pecuniary in character, and because fraud was the essential element of the offense.

[14] Circuit Judge Frank said: "Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal." 195 F. 2d 583, 590. The Supreme Court denied certiorari, 344 U.S. 838 (1952) and a rehearing, 344 U.S. 889 (1952), with Justice Black dissenting on both occasions.

[15] 345 U.S. 989 (1953). The Court also declined to hear oral argument. Four Justices thought oral argument should have been allowed.

[16] 346 U. S. 271 (1953).

[17] For Justice Douglas' opinion see 346 U.S. 313 (1953).

[18] 346 U.S. 273 (1953).

Justice Black protested against what he regarded as the unseemly haste of the Court, and even expressed doubt whether the Court has the power to set aside a stay granted in vacation. Justice Frankfurter dissented only on the ground that more time should have been allowed to consider adequately a novel and complicated legal issue. Justice Douglas declared not only that the issue was substantial, but also that on further study and reflection he knew he was right on the law, "deep in my heart." He insisted that since a large part of the crime took place after its effective date, the Atomic Energy Act was in the picture. It is elemental, he argued, as did Justice Black, that where two penal statutes may apply, the court has no choice but to impose the less harsh sentence.

I. QUESTIONS OF NATIONAL POWER

1. FEDERAL RIGHTS

Aliens: Deportation and Exclusion. In *Heikkila* v. *Barber*[19] the Court held that the validity of a deportation order issued under the Immigration Act of 1917 may be challenged in court only by way of habeas corpus. Injunctive and declaratory relief under the Administrative Procedure Act and the Declaratory Judgments Act was therefore denied. Section 10 of the Administrative Procedure Act provides for court review of agency action in broad terms, "except so far as statutes preclude judicial review." Section 19(a) of the Immigration Act of 1917 declares that in every deportation case, "the decision of the Attorney General shall be final." While the Court agreed that the purpose of the Administrative Procedure Act was to expand greatly the availability of judicial review, it ruled that the concept of administrative finality in immigration legislation has a history, the teaching of which is that Congress intended to make deportation orders nonreviewable to the fullest extent possible under the Constitution. A quarter of a century of judicial interpretation has established that habeas corpus satisfies this minimum measure of review.

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[19] 345 U.S. 229 (1953). See generally: "Developments in the Law: Immigration and Nationality," *Harvard Law Review*, Vol. 66, pp. 643–745 (Feb., 1953); Stimson Bullitt, "Deportation as a Denial of Substantive Due Process," *Washington Law Review*, Vol. 28, pp. 205–22 (Aug., 1953); Jerome H. Heckman, "Our Immigration Laws, A Continuing Affront to the Administrative Procedure Act," *Georgetown Law Journal*, Vol. 41, pp. 364–93 (March, 1953); Note, "Constitutional Restraints on the Expulsion and Exclusion of Aliens," *Minnesota Law Review*, Vol. 37, pp. 440–58 (May, 1953); Jack Wasserman, "The Immigration and Nationality Act of 1952—Our New Alien and Sedition Act," *Temple Law Quarterly*, Vol. 27, pp. 62–89 (Summer, 1953); Comment, "The Alien and the Constitution," *University of Chicago Law Review*, Vol. 20, pp. 547–69 (Spring, 1953).

Speaking for the Court, Justice Clark said that there was quite a difference between judicial review in the sense of the Administrative Procedure Act and review by habeas corpus, since the former embraces the whole record to see whether there is substantial evidence, whereas the latter is limited to the enforcement of due process requirements. Justice Frankfurter took the position that this distinction was unsound, since a declaratory judgment action can be limited to the scope of review appropriate to habeas corpus. The real difference, he noted, lies in the fact that if the individual can resort only to habeas corpus, he must wait until he is in physical custody before he can go to court, a point which is "legally narrow but practically important." Furthermore, as Attorney General Brownell pointed out in his recent report to the Judicial Conference, since the substantial evidence rule is actually employed by the courts in deportation cases, it is doubtful whether the scope of review in habeas corpus is much different from what is possible under statutory review.[20]

The same question has been raised in connection with the Immigration and Nationality Act of 1952. On June 11, 1953, the Court of Appeals for the District of Columbia held that under the new statute deportation orders may be reviewed in an action for declaratory and injunctive relief.[21] On November 9, 1953, the Supreme Court granted the government's petition for certiorari.[22] The Attorney General has made the sensible suggestion that Congress ought to settle the matter by enacting clarifying legislation.[23]

A resident alien held for deportation has some due process rights; but an alien excluded at the gates of the country has none. It is important, therefore, whether the situation is one of deportation or exclusion. This was the issue in *Kwong Hai Chew* v. *Colding*.[24] Chew, a Chinese seaman, was a resident alien, married to a native American, and owner of a home in New York. He served creditably during World War II in the U.S. merchant marine, and had never had any difficulty with governmental authorities. A petition for citizenship filed in April, 1950, was still pending. After being screened and passed by the Coast Guard, in November, 1950, he went on a voyage as chief steward of an American ship. When the ship returned to New York, he was excluded as an alien whose entry was prejudicial to the public interest. The Attorney General denied Chew a hearing and refused to inform him of the accusations against him, on the ground that the information was confidential. The lower federal courts denied Chew's petition for habeas corpus on the authority of the recent *Knauff* case.[25]

The Supreme Court reversed, holding that the *Knauff* case was not controlling since Ellen Knauff had been an alien entrant, whereas Chew was a resident alien, so far as the constitutional right to due process is concerned. It is established that an alien who is a lawful permanent resident of the country may not be expelled or deported without notice of the charges and some sort of a hearing. The Court ruled that Chew's previous constitutional status was not terminated by the voyage. Justice Burton noted that this accords with our immigration and naturalization law, which, for example, counts service on American vessels, after lawful entry, as part of residence. Justice Burton did not believe that the preservation of Chew's right to due process left an unprotected spot in the nation's armor. Chew had to satisfy Congress and the Attorney General before he was admitted to permanent residence in the first place, he was cleared by the Coast Guard, and he will have to offer assurances that he is not a security risk when he comes up for naturalization.[26]

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[20] Report of the Proceedings of the Regular Annual Meeting of the Judicial Conference of the United States, September 24–25, 1953, pp. 42–43.

[21] *Rubinstein* v. *Brownell*, 206 F. 2d 449.

[22] 74 S. Ct. 122.

[23] Report (cited in note 20), p. 43.

[24] 344 U.S. 590 (1953). Justice Minton dissented without opinion.

[25] *U.S. ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537 (1950).

But by a 5–4 vote the Court reached a different conclusion in *Shaughnessy* v. *United States ex rel. Mezei.*[27] Of course the facts were different, but perhaps not too different. Mezei, an alien, lived in the United States from 1923 to 1948. In May, 1948, he went to Europe to visit his dying mother in Rumania. Denied entry there, he remained in Hungary for some 19 months, due to difficulty in getting an exit permit. He received a quota immigration visa from the American Consul in Budapest, and when he arrived at New York the Attorney General excluded him without a hearing on the "basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest" for security reasons. Mezei then applied for and was denied admission to some 15 countries. At long last this dangerous character gave up trying to depart. During all this time he remained in compulsory residence at Ellis Island. Finally, in November, 1951, the federal district court granted habeas corpus, holding that after 21 months further detention was excessive, and justifiable only by affirmative proof that he was in fact a danger to public safety. The government had declined to divulge its evidence, even *in camera*. The Court of Appeals affirmed on the theory that the power to hold an alien in confinement ends when deportation becomes impossible. The Supreme Court reversed.

Resting his opinion upon the proposition that what the political departments of the government do in regard to the expelling or excluding of aliens is largely immune from judicial control, Justice Clark pointed out that, unlike the situation concerning resident aliens, whatever procedure Congress authorizes for alien entrants is due process. In exclusion cases the Attorney General cannot be compelled to disclose the evidence underlying his determination, and the courts cannot retry it. The basic point, of course, was the holding that Mezei was an entering alien. Neither his prior residence in this country nor his "harborage" at Ellis Island transformed this proceeding into something other than an exclusion proceeding. Justice Clark also stressed the point that Mezei left this country without re-entry papers and, unlike Chew, stayed behind the Iron Curtain for 19 months. Under the applicable statutes, he thought Mezei's protracted absence constituted a clear break in the alien's continuous residence here. As for Mezei's continued confinement at Ellis Island, Justice Clark said that the government could keep an alien on a ship, and that Congress as a matter of grace chose the more generous course of temporary harborage, which bestows no additional rights. Since the statute provides that such shelter ashore shall not be regarded as a landing, the continued exclusion of Mezei does not deprive him of any statutory or constitutional right. The Court ruled, finally, that neither statute law nor reason requires temporary release on bond. Justice Clark took note of the hardship in this case, but, he said, "the times being what they are, Congress may well have felt that other countries ought not shift the onus to us; that an alien in respondent's position is no more ours than theirs." This argument is as broad as it is long: one might argue that precisely because the times are what they are, the Supreme Court should be especially alert to protect a simple right to fundamental justice.

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[26] In *Yanish* v. *Barber*, 73 S. Ct. 1105 (1953), Justice Douglas, sitting alone, ruled that an alien held for deportation has a right to release on bail while appealing to a Court of Appeals a denial of habeas corpus by a district court where the appeal presented a substantial question. Bail is designed not only to provide security for the appearance of the prisoner, but also to protect his right to appeal. Justice Douglas also ruled that while the discretion of the Attorney General in regard to bail is very broad, its exercise is subject to judicial review, in accordance with the teaching of *Carlson* v. *Landon*, 342 U.S. 524 (1952). The habeas corpus action arose from a refusal of Yanish to execute a bond required by the Attorney General which attached a number of conditions he found objectionable, such as giving up familial associations.

[27] 345 U.S. 206 (1953).

So argued the four dissenters in this case. Justice Black castigated a procedure where "government makes one person's liberty depend upon the arbitrary will of another" as violative of due process and smacking of dictatorship. While Justice Jackson agreed that as a matter of law this was an exclusion case, he also noted that actually Mezei had been a law-abiding inhabitant of this country for a quarter of a century, and "seems to have led a life of unrelieved insignificance." He ventured the opinion that Mezei "must have been astonished to find himself suddenly putting the Government of the United States in such fear that it was afraid to tell him why it was afraid of him." It is not at all surprising that other countries will not take him. "Since we proclaimed him a Samson who might pull down the pillars of our temple, we should not be surprised if peoples less prosperous, less strongly established and less stable feared to take him off our timorous hands." Justice Jackson insisted that Mezei was deprived of his liberty at Ellis Island; to tell him he is free to leave in any direction but west "might mean freedom, if only he were an amphibian!"

While courts pay great deference to the judgment of the legislative and executive departments in matters of substantive due process, and particularly as regards policies affecting security and alien exclusion, Justice Jackson maintained that procedural due process is another matter. It is what due process requires "most uncompromisingly"; is it "more elemental and less flexible than substantive due process." Procedural due process "yields less to the times, varies less with conditions, and defers much less to legislative judgment." Furthermore, this is technical law, a specialized responsibility of the judiciary. Questions of due process matter a great deal. "Only the untaught layman or the charlatan lawyer," Justice Jackson declared, "can answer that procedures matter not. Procedural fairness and regularity are of the indispensable essence of liberty." This is especially important here, since aliens are more handicapped than citizens, and since the occasion of this detention was fear of future misconduct rather than crimes already committed. Justice Jackson thought that while Mezei had no right of entry, it did not follow that he had no rights at all, and that when indefinite confinement becomes the means of enforcing exclusion, due process requires that the alien be told of the charges and be given a chance to overcome them. And he observed: "I have not been one to discount the Communist evil. But my apprehensions about the security of our form of government are about equally aroused by those who refuse to recognize the dangers of Communism and those who will not see danger in anything else." Justice Jackson could not believe that giving Mezei fair notice of charges and a fair hearing would menace our security. "No one," he declared, "can make me believe that we are that far gone."

Expatriation. Mandoli was born in the United States of unnaturalized Italian parents, thus becoming an American citizen by virtue of our Constitution and a national of Italy by force of Italian law. While a "suckling" his parents returned to Italy. At the age of about 15, he tried to come to the United States, but the American Consul at Palermo refused permission on the ground that he was too young to make the journey unaccompanied. In 1931 he served briefly in the Italian army. After failing in efforts to come here in 1937 and 1944, he was finally admitted in 1948 for the purpose of bringing an action for a declaratory judgment to establish his citizenship. The district court held that Mandoli had expatriated himself, finding (1) that his service in the Italian army had been voluntary, and that he had taken an oath of allegiance to the King, and also (2) that his continuing to reside in Italy after attaining his majority constituted an election between his dual citizenships in favor of that of Italy. The government then abandoned the first ground because the Attorney General ruled that Mandoli's service in the Italian army and the attendant oath could only be regarded as having been taken under legal compulsion amounting to duress. But the Court of Appeals affirmed on the second ground. In the Supreme Court only five Justices voted to reverse, even though the government agreed that the Court of Appeals should be overruled.[28] Justice Jackson noted that the Act of 1907 limited the presumption of expatriation resulting from foreign residence to naturalized citizens only. The Nationality Act of 1940 had no purpose of subjecting a citizen by birth to the hazard and burden of election at majority. A proposal to this effect had been presented by the State Department, but refused by Congress. In short, then, a native-born citizen has a right to return to this country, but it is not mandatory that he do so at any particular time.[29] Speaking for the minority of four, Justice Douglas took the position that the controlling fact was that Congress made the taking of "an oath of allegiance to any foreign state" a ground for loss of citizenship.

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[28] *Mandoli* v. *Acheson*, 344 U.S. 133 (1952). See Emanuel L. Gordon, "Loss of Citizenship by Continuous Residence Abroad," *Columbia Law Review*, Vol. 53, pp. 451–75 (April, 1953).

[29] Such was the teaching, Justice Jackson noted, of *Perkins* v. *Elg*, 307 U.S. 325 (1939).

Equal Rights in the District of Columbia. An 1871 act of Congress created a bicameral Legislative Assembly for the District of Columbia, with power over "all rightful subjects of legislation" within the District, consistent with the Constitution, and subject to repeal or modification at any time by Congress. This Assembly, which was abolished in 1874, enacted statutes in 1872 and 1873 forbidding discrimination by restaurants and other places of public accommodation solely on account of race or color. Overruling a 5-4 decision of the Court of Appeals of the District sitting *en banc*, the Supreme Court unanimously ruled that these statutes were still enforceable.[30] Justice Douglas observed that the characterization of this District government as a "territorial government" was an apt analogy, since the grant to the Legislative Assembly was substantially identical with the grant of legislative power to the territorial governments. Furthermore, he noted that the territorial and District clauses of the Constitution are phrased in very similar language. It follows that the power of Congress to grant self-government to the District is as great as its authority to do so in the case of territories. The Supreme Court rejected the distinction made below between the delegation of "municipal" and "general" powers, holding that the power of Congress over the District includes all powers of legislation which a state possesses. A state clearly may grant home-rule municipalities a police power as broad as that of the state, and legislation forbidding race discrimination in facilities serving a public function is within the police power of the states. Justice Douglas concluded "that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power, subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted." Finally, the Court ruled that the acts of 1872 and 1873 survived all later changes and are still part of the governing body of laws applicable in the District, and that they were not abandoned or repealed as a result of non-use and administrative practice. Justice Douglas pointed out that "the failure of the executive branch to enforce a law does not result in its modification or repeal. . . . The repeal of laws is as much a legislative function as their enactment."

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[30] *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100 (1953). See Helen M. Rosenthal, "Delegable Powers and the District of Columbia," *George Washington Law Review*, Vol. 21, pp. 337–53 (Jan., 1953); Phineas Indritz, "Racial Ramparts in the Nation's Capital," *Georgetown Law Journal*, Vol. 41, pp. 297–329 (March, 1953).

In *Western Pacific R. Corp.* v. *Western Pacific R. Co.*, 345 U.S. 247 (1953), the Court held that Section 46(c) of Title 28 of the U. S. Code does not require each circuit judge of a Court of Appeals to consider every petition for a hearing or rehearing *en banc*, but that each Court may, if it wishes, delegate this responsibility to a division. The statute, adopted in 1948, was a legislative ratification of *Textile Mills Securities Corp.* v. *Commissioner*, 314 U.S. 326 (1943), which merely held that the Court of Appeals has the power to order a hearing *en banc*. To hold that on request the court must sit *en banc* to entertain a motion for an *en banc* hearing would impose an unwarranted burden upon it. Litigants are always free to suggest that a particular case is appropriate for consideration *en banc*, and of course the court itself has the power to initiate *en banc* proceedings *sua sponte*.

The Investigative Power of Congressional Committees and Freedom of Speech. At long last someone who challenged the scope of activity of a congressional investigatory committee won an appeal in the Supreme Court, and by a unanimous vote at that.[31] Rumely, secretary of an organization called the Committee for Constitutional Government, sells books and pamphlets which reflect a political coloration commonly described as right wing. He refused to disclose to the House Select Committee on Lobbying Activities (the Buchanan Committee), which was set up to study the operation of the Federal Regulation of Lobbying Act of 1946, the names and addresses of those who made bulk purchases of these books for further distribution. Both Rumely and his organization were registered under the Lobbying Act. Its reports indicated that it spent about $2,000,000 between October, 1946 and August, 1950. Since the Lobbying Act requires the reporting of all contributions over $500, the Committee for Constitutional Government adopted the policy of accepting payments of over $490 only if the contributor specifies that the money is to be used for distributing books and pamphlets. It described such transactions as sales and hence did not report them.[32] The resolution of Congress setting up the Buchanan Committee declared that "the Committee is authorized and directed to conduct a study and investigation of . . . all lobbying activities intended to influence, encourage, promote, or retard legislation."

Starting with the premise that the resolution determines the scope of the power of the Committee to exact testimony, Justice Frankfurter held that in construing the term "lobbying activities" the Court must, if it is possible, choose the construction which avoids serious constitutional issues, just as it does in the case of ordinary legislation.[33] He thought the government's position, that the Committee had the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote from the legislative process, raised doubts of constitutionality under the First Amendment not of a "fanciful or factitious" nature. He also felt that the Court ought not to apply constitutional limitations to the investigative power of legislative committees unless Congress has authorized an inquiry of dubious limits in unequivocal language. He then proceeded to rule that "as a matter of English" the phrase "lobbying activities" means ordinarily representations made directly to Congress, its members or committees, and does not include attempts to influence the thinking of the community. He said that if Congress had wanted to cover all efforts to influence public opinion, it would have used more explicit language. He insisted that his interpretation was "not barred by intellectual honesty."[34] In a concurring opinion Justice Douglas, with whom Justice Black agreed, took the less strained position that the resolution in question did authorize the sort of investigation the Buchanan Committee attempted, and that, so construed, it violated the First Amendment.

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[31] *United States* v. *Rumely*, 345 U.S. 41 (1953). See Comment, "Limits on Congressional Inquiry," *University of Chicago Law Review*, Vol. 20, pp. 593–97 (Spring, 1953); Paul J. Liacos, "Rights of Witnesses before Congressional Committees," *Boston University Law Review*, Vol. 33, pp. 337–86 (June, 1953).

[32] The books in question included: John T. Flynn, *The Road Ahead;* Thomas J. Norton, *The Constitution of the United States;* Melchior Palyi, *Compulsory Medical Care;* Irving B. McCann, *Why the Taft-Hartley Law.*

[33] See Note, "Supreme Court Interpretation of Statutes to Avoid Constitutional Decisions," *Columbia Law Review*, Vol. 53, pp. 633–51 (May, 1953).

Procedural Due Process. The proposition that a vague criminal statute violates due process because it does not give fair warning was applied in *United States* v. *Cardiff.*[35] Section 301(f) of the Federal Food, Drug and Cosmetic Act prohibited "the refusal to permit entry or inspection as authorized by Section 704." Section 704 authorized federal officials "after first making request and obtaining permission of the owner, operator or custodian" of the plant, "to enter" and "to inspect" the establishment "at reasonable times." Cardiff refused inspectors permission to enter or inspect his plant. The Court of Appeals reversed a conviction on the ground that the statute prohibits a refusal to permit inspection only if such permission has previously been granted. The Department of Justice, on further appeal, argued that the statute ought to be read as prohibiting a refusal to permit inspection at any reasonable time. The Supreme Court agreed with the government's contention that only through inspection of factories can the benign purposes of the statute be achieved, but held, in affirming the Court of Appeals, that nowhere does the statute say that a factory manager must allow entry and inspection at a reasonable hour. The statute, on the contrary, seems to prohibit refusal to permit inspection only if permission has been granted previously. But this interpretation breeds problems. For example, if permission is once given may it be revoked? The alternative construction is equally treacherous, since it gives conflicting commands, making inspection depend upon consent and refusal to allow inspection a crime. The Court thus threw up its hands and said that this was a bad statute because it did not give fair and effective notice of what is forbidden. "Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula. We cannot sanction taking a man by the heels for refusing to grant permission which this Act on its face apparently gave him the right to withhold."[36]

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[34] Justice Frankfurter also took comfort from the fact that in *United States* v. *CIO*, 335 U.S. 106 (1948), the Court, with a view to avoiding a serious constitutional doubt, strained words even harder.

[35] 344 U.S. 174 (1952). Justice Burton dissented without opinion. I believe this is the first case holding a federal statute unconstitutional since *United States* v. *Lovett,* 328 U.S. 303 (1946). The only other decision invalidating an act of Congress since the holocaust of 1935–1936 was *Tot* v. *United States*, 319 U.S. 463 (1943). For an up-to-date list of acts of Congress held unconstitutional by the Supreme Court see *Constitution of the United States, Revised and Annotated* (Washington, 1953), pp. 1241–54.

[36] Congress promptly rewrote Section 704 to authorize inspection in clear and unambiguous language, Public Law 217, Chapter 350, 83d Cong., 1st sess., approved August 7, 1953.

A very important issue relating to the meaning of a fair hearing was decided by a divided Court in *United States* v. *Nugent.*[37] Under the Selective Service Act, religious conscientious objectors are exempt from military service. If the local draft board denies a claim, the individual concerned may get review by an appeal board. All such appeals are referred to the Department of Justice for an "appropriate inquiry" and a "hearing." Then the Department makes its recommendation to the appeal board, which is free to accept or reject it. The Department of Justice uses the FBI to investigate the registrant's background and reputation for sincerity. At the departmental hearing the registrant may appear with an advisor and witnesses, and upon request he is entitled to be told "as to the general nature and character" of any unfavorable evidence developed by the FBI, but he is not permitted to see the FBI report, nor is he informed of the names of the persons interviewed. Five Justices held that this procedure satisfies the statute, which merely guarantees a "hearing" without more, and the Fifth Amendment. They ruled that the Department of Justice has fulfilled its duties under the statute if the registrant is given a fair opportunity to speak his piece and submit his evidence, and is given a fair résumé of adverse evidence in the investigator's report. They insisted that the statutory requirement of a "hearing" ruled out any "sham substitute," but that the word does not comprehend "the formal and litigious procedures." The final duty to classify rests with the local and appellate boards, and the Department of Justice merely renders an advisory or auxiliary service which Congress is not obliged to provide. As for the Fifth Amendment, the majority ruled that this procedure was a valid exercise of the war power, considering the perilousness of the times, difficulty of the issues, and the "imperative needs of mobilization and national vigilance."

Justices Frankfurter, Black, and Douglas dissented. Justice Frankfurter said that the whole point of the hearing, since the registrant has already had a chance to put all his evidence before the draft board, is to permit him to rebut the contents of the FBI report. He thought "the enemy is not yet so near the gate that we should allow respect for traditions of fairness, which has heretofore prevailed in this country, to be overborne by military exigencies." Indeed, he asserted that "in a country with our moral and material strength the maintenance of fair procedures cannot handicap our security." On the contrary, our strength and security are reinforced by adhering to our moral professions. In a brief opinion Justice Douglas observed that "the use of statements by informers who need not confront the person under investigation or accusation has such an infamous history that it should be rooted out from our procedure. A hearing at which these faceless people are allowed to present their whispered rumors and yet escape the test and torture of cross-examination is not a hearing in the Anglo-American sense."

After due notice and full hearings, including final oral argument on published proposed rules, the Interstate Commerce Commission promulgated important new rules drastically regulating trip leasing, that is, the use of equipment by authorized motor carriers when the equipment is not owned by the carrier but is leased from the owner or obtained by interchange with another authorized carrier. The Supreme Court held that it was not error for the district court to refuse to grant a *de novo* hearing, including the introduction of additional oral evidence.[38] Justice Reed said that the right to be heard in court "is not to be construed as an avenue toward delay. The claim of confiscation must be substantial, the import of the proffered evidence clear, and the inability to test the question before the Commission patent, in order to justify an oral hearing on the question in the courts." In this context, the right to a trial *de novo* was not automatically established merely because the Commission denied a petition for a rehearing which invoked constitutional principles. The Court noted that a great deal of evidence had been presented to the Commission dealing with the economic impact of the new rules, and that parties had every opportunity to introduce such evidence in the agency proceedings.[39]

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[37] 346 U.S. 1 (1953). See Mulford Q. Sibley and Philip E. Jacob, *Conscription of Conscience* (Ithaca, N.Y., 1952); Francis Heisler, "The Law versus the Conscientious Objector," *University of Chicago Law Review*, Vol. 20, pp. 441–60 (Spring, 1953).

Substantive Due Process. In *Baltimore & Ohio Railroad Co.* v. *United States*[40] the Court rejected a claim that rates prescribed by the Interstate Commerce Commission for carrying certain kinds of fresh vegetables were "confiscatory" in violation of due process, on the ground that the rates would produce less money than it would cost the railroads to carry them. There was no claim that the challenged rates would make any one of the complaining railroads operate its entire business at a loss, or even carry all fresh vegetables at a loss. The prescribed rates were merely minor alterations in a vast, complex network of rates.

The Court held that a great deal of flexibility in rate-making is absolutely necessary, and "so long as rates as a whole afford railroads just compensation for their over-all services to the public the Due Process Clause should not be construed as a bar to the fixing of noncompensatory rates for carrying some commodities when the public interest is thereby served." Justice Douglas and Chief Justice Vinson dissented on the ground that the record before the ICC, described as "largely a hodge-podge of statistics," did not show that the prescribed rates were reasonable.

Disbarment. Abraham J. Isserman, one of the attorneys for the Communist leaders who were convicted in the *Dennis* case,[41] was given a jail sentence by Judge Medina for contempt, which was confirmed by the Supreme Court in the

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[38] *American Trucking Associations* v. *United States*, 344 U.S. 298 (1953).

[39] Justices Black and Douglas dissented on the ground that the administrative rules were not within the terms of the statute.

[40] 345 U.S. 146 (1953). In *King* v. *United States*, 344 U.S. 254 (1952), the Court approved an ICC order requiring Florida railroads to charge intrastate freight rates which would reflect the same increases that had been authorized for comparable interstate traffic, although the interstate rates were increased partly to make up a deficit in passenger revenue.

[41] *Dennis* v. *United States*, 341 U.S. 494 (1951).

Sacher case.[42] Following that he was suspended from practice by the federal district court for the Southern District of New York for two years. Then by unanimous vote the Supreme Court of New Jersey disbarred him, and the Supreme Court of the United States denied certiorari, over the objections of Justices Black and Douglas.[43] They thought that the New Jersey court had not given Isserman the kind of hearing required by due process, but merely acted on the basis of a summary conviction for contempt, without a hearing, by a federal district judge. Finally, after the issuance of a show cause order, the United States Supreme Court disbarred him.[44] The Chief Justice explained that under Rule 2(5) disbarment by a state does not automatically disbar members of the bar of the Supreme Court, but that in the absence of some "grave reason" to the contrary, it will follow the state court's finding. In reply to the argument that Isserman had already been punished sufficiently, the Chief Justice pointed out that this misconceives the purpose of disbarment, which is to protect the Court, and hence society, as an instrument of justice. But he said that the Court had considered Isserman's case on its merits, and is not laying down a rule that disbarment must necessarily result from contempt. The four dissenting Justices thought that Isserman had already been punished severely, remarking that "if the purpose of disciplinary proceedings be correction of the delinquent, the courts defeat the purpose by ruining him whom they would reform."

Fair Compensation. In *United States* v. *Caltex*[45] the Court held that the destruction by the army of privately-owned terminal facilities of oil companies in Manila to prevent their falling into the hands of the advancing enemy did not constitute a compensable taking.[46] It was noted that if the facilities had been destroyed after the retreat, there would certainly have been no right to compensation. The Court could see no legal significance in the fact that the property was destroyed before the withdrawal. The common law has long recognized that in times of imminent peril the sovereign may lawfully destroy the property of a few to save the property of many. In this case the property had been destroyed, not appropriated for subsequent use. Said the Chief Justice: "The terse language of the Fifth Amendment is no comprehensive promise that the United States will make whole all who suffer from every ravage and burden of war." Justices Douglas and Black, dissenting, argued that this property had been as clearly appropriated for the war effort as requisitioned food or supplies.

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[42] *Sacher* v. *United States*, 343 U.S. 1 (1952).

[43] *Isserman* v. *Ethics Committee of the Essex County Bar Association*, 345 U. S. 927 (1953). See: David L. Weissman, "Sacher and Isserman in the Courts," *Lawyers Guild Review*, Vol. 12, pp. 39–47 (Winter, 1952); Note, "The Imposition of Disciplinary Measures for the Misconduct of Attorneys," *Columbia Law Review*, Vol. 52, pp. 1039–53 (Dec., 1952); Ralph S. Brown, Jr. and John D. Fassett, "Loyalty Tests for Admission to the Bar," *University of Chicago Law Review*, Vol. 20, pp. 480–508 (Spring, 1953).

[44] *In re Isserman*, 345 U.S. 286 (1953). The vote was 4–4, Justice Clark not participating. The explanation for the outcome, with this vote, would seem to be that under the applicable Rule of the Court a lawyer already disbarred by a state court has the "burden" of showing cause why he should not be disbarred in the Supreme Court. If the Justices are evenly divided as to whether he has shown good cause he loses, since the burden was upon him to demonstrate that he should not be disbarred.

[45] 344 U.S. 149 (1952).

[46] The controlling precedent was *United States* v. *Pacific R. Co.*, 120 U.S. 227 (1887).

2. THE FEDERAL TAXING POWER

United States v. *Kahriger*[47] sustained the constitutionality of the Gamblers' Occupational Tax Act of 1951, which levies an occupational tax of $50 a year upon all persons "engaged in the business of accepting wagers," and also requires them to register with the Collector of Internal Revenue. The statute in addition levies a tax of 10% upon all wagers except parimutual wagering licensed by a state. The district court dismissed an information on the authority of the *Constantine* case,[48] holding that the act invaded the reserved police powers of the states. The Supreme Court pointed out that the *Constantine* case dealt with a federal tax of $1,000 levied upon all persons carrying on a liquor business in violation of state law, whereas here the wagering tax applied to all persons engaged in the business of receiving wagers, whether or not such activity violated state law. Many similar regulatory taxes have been upheld, such as those on lottery tickets, state bank notes, colored oleomargerine, narcotics, firearms, and marihuana. It is now established, said Justice Reed, that a federal excise tax is not invalid merely because it discourages the activities taxed, or because the revenue obtained is negligible. "It is axiomatic that the power of Congress to tax is extensive and sometimes falls with crushing effect on businesses deemed unessential or inimical to the public welfare, or where, as in dealings with narcotics, the collection of the tax also is difficult." The remedy for excessive taxation, he suggested, was in the hands of Congress, not the courts. He found it "hard to understand why the power to tax should raise more doubts because of indirect effects than other federal powers." Unless there are provisions extraneous to any tax need, he thought the Court cannot limit the exercise of the taxing power. Here he found that all the provisions of the statute were adapted to the collection of a valid tax. The registration requirement of name, residence, and place of business was, he believed, "quite general in tax returns," and facilitates the collection of the tax.

The court also held that the registration requirement did not violate the self-incrimination clause in this case because, since Kahriger had failed to register, he cannot claim the privilege, even assuming that the disclosure of violations of law is called for. The court relied upon a previous holding that one who is required to file an income tax return must file one, and if the form calls for answers that are privileged, he must raise that objection in the return.[49] But still one has to file a return. Futhermore, the Court ruled that assuming Kahriger can raise the self-incrimination issue, the privilege has relation only to past acts, and not to future acts that may or may not be committed. Under the wagering act he is not compelled to confess to acts already committed; he is merely informed by the statute that in order to engage in the business of wagering in the future, he must fulfil certain conditions.

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[47] 345 U.S. 22 (1953). See R. L. Berry and J. M. Sullivan, "The Constitutionality of Federal Taxation as an Exercise of Federal Police Power," *Notre Dame Lawyer*, Vol. 28, pp. 127–36 (Fall, 1952).

[48] *United States* v. *Constantine*, 296 U.S. 287 (1935).

[49] *United States* v. *Sullivan*, 274 U.S. 259 (1927).

Justice Jackson concurred, "but with such doubt that if the minority agreed upon an opinion which did not impair legitimate use of the taxing power" he said he would probably join it. What disturbed him was that this tax falls only on specified gamblers whose calling in most states is illegal, and requires them to identify themselves, not because they have incomes like other people, but because of the source of their incomes. He found it difficult to regard this as "a rational or good-faith revenue measure," in spite of the deference judges pay to Congress. Furthermore, he pointed out that our system is one of taxation by confession, and depends upon the good will of the people, of which there is a great deal. He was afraid this good will might be frittered away by using the taxing power to achieve moral reforms which are outside the scope of direct legislation.

Three Justices dissented. Justice Frankfurter argued that of course Congress may make an oblique use of the taxing power in dealing with activities with which it may deal directly, under the commerce power, for example. But he said the Court cannot shut its eyes when Congress tries to control conduct which the Constitution left to the states, merely because Congress "wrapped the legislation in the verbal cellophane of a revenue measure." He thought that legislative and general history supported the conclusion that what is formally a taxing measure is essentially an effort to deal with professional gambling. He also thought that the statute was unconstitutional because the enforcing provision was designed for the systematic confession of crimes with a view to prosecution under state law. Justice Douglas agreed to the extent that this tax was an attempt by Congress to control conduct which the Constitution left to the responsiblility of the states. Justice Black dissented on Fifth Amendment grounds, arguing that the statute requires a man to register and confess that he is engaged in gambling; thus, "it creates a squeezing device contrived to put a man in federal prison if he refuses to confess himself into a state prison as a violator of state gambling laws."

3. THE FEDERAL COMMERCE POWER

The Fair Labor Standards Act covers employees "engaged in commerce or in the production of goods for commerce." The Court held that the Act applies to all the employees of a Pennsylvania road contractor who manufactures a road surfacing mixture, made of local materials, $85\frac{1}{2}\%$ of which is used on interstate roads or railroads by the contractor or his customers.[50] All of the product is produced in Pennsylvania, and none is manufactured for shipment across state lines. Justice Black held that the phrase "production of goods for commerce" does not necessarily mean "production of goods for transportation in commerce." The Court had previously ruled that interstate roads and railroads are indispensable instrumentalities in the carriage of goods and persons moving in interstate commerce, and that employees engaged in repairing them are in commerce. "Consequently he who serves interstate highways and railroads serves commerce. By the same token he who produces goods for these indispensable and inseparable parts of commerce produces goods for commerce." It is interesting to note that Justices Douglas and Frankfurter, who dissented, raised no constitutional objection, but merely argued that the Court's interpretation of the statute went beyond the intent of Congress.

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[50] *Alstate Construction Co.* v. *Durkin*, 345 U.S. 13 (1953). A similar decision was reached in a companion case, *Thomas* v. *Hempt Brothers*, 345 U.S. 19 (1953). Here the Court ruled that the Act covers employees of the operator of a stone quarry whose customers included the Pennsylvania Turnpike, the Pennsylvania Railroad, and an airport, all of which

The scope of federal power over the interstate transmission of electricity was involved in *United States* v. *Public Utilities Commission of California.*[51] The California Electric Power Company produces electricity in California and markets most of it in the state, subject to the authority of the state commission. But it sells some power, at wholesale rates, to the Navy and a Nevada county for consumption in Nevada. The power is transmitted to a substation in California near the state line, where it is taken over by the Navy and the county and delivered at the same high voltage to Nevada, where it is stepped down for local distribution and consumption. About a fourth of the Navy's power and all of the county's is resold to local consumers. The Supreme Court ruled that the Federal Power Commission, and not the state commission, has authority over these sales at wholesale. It is firmly established, Justice Reed pointed out, that the concept of commerce includes the transportation of public property.[52] The fact that the electricity was transmitted across the state boundary over lines owned by the buyers was regarded as irrelevant. But the federal statute declared that the authority of the federal commission was "to extend only to those matters which are not subject to regulation by the States." Justice Reed ruled that the *Attleboro* case[53] had established the proposition that state authority did not extend to an interstate sale in wholesale quantities to distributing companies for resale to consumers.

Still another interpretation of the nature of interstate commerce was propounded in the case of a woman who had purchased a railway ticket for a trip from Meriden, Connecticut, to Fall River, Massachusetts, via New Haven.[54] The passenger had a stopover of about an hour in New Haven, where she had to change trains. She gave her suitcase to a redcap employee of the railroad, the

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handle interstate traffic. The employer manufactured cement mixtures and hauled them in trucks to his customers. In *United States* v. *Universal C.I.T. Credit Corp.*, 344 U.S. 218 (1952), it was decided that the offense made punishable under the Fair Labor Standard Act is a course of conduct and not individual acts.

[51] 345 U.S. 295 (1953).

[52] *Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497 (1950).

[53] *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927).

[54] *New York, New Haven & H. R. Co.* v. *Nothnagle*, 346 U.S. 128 (1953).

suitcase vanished, and she sued the company. Disagreeing with the state court, which regarded the trip as having been suspended for a substantial period of time, thereby making state law applicable, the Supreme Court held that this was clearly a transaction incidental to an interstate journey within the scope of the Interstate Commerce Act. "Neither continuity of interstate movement nor isolated segments of the trip can be decisive." The determinative fact was the destination of the passenger when she began her journey. The stopover was described as temporary, for transfer purposes merely. Thus the redcap, a railroad employee, was performing services in connection with an interstate trip. Incidentally, this decision made no difference to the passenger, since both the federal and the state law were on her side.

While a state may not invade the interstate commerce coverage of the Federal Employers' Liability Act by arbitrarily presuming a renunciation of rights which it confers, or by compelling parties to elect between their federal remedies and an alternative state compensation plan, a state may, absent overreaching or fraud, give awards to employees engaged in interstate commerce if the parties voluntarily agree.[55] The difference between coercion and permission was regarded as decisive. On the other hand, since FELA permits an employee to bring his suit wherever the carrier "shall be doing business," a Georgia court may not enjoin a resident of the state whose injury took place in Georgia from suing in an Alabama court.[56] The deliberate policy of Congress displaces the traditional power of a state court to enjoin its citizens from suing in the courts of another state on the ground of oppressiveness. The federal *forum non conveniens* doctrine, formulated in Section 1404(a) of the Judicial Code of 1948, applies to FELA cases, but only to those in the federal courts. Justice Frankfurter thought that since judicial process is abused in state as well as federal courts, the federal *forum non conveniens* statute was being read with "blind literalness," "the cardinal sin in statutory construction."

There were two decisions in the field of foreign commerce during the 1952 Term which are worth noting here, though both turned on questions of statutory interpretation. In one case the Court held that a federal district court has jurisdiction, under the Lanham Trade-Mark Act of 1946, to award relief to an American corporation for acts of trade-mark infringement and unfair competition consummated in a foreign country by a United States citizen and resident.[57] So the Court read the statute, which declared that it reached "all commerce which may lawfully be regulated by Congress." Two dissenting Justices thought that this reading was inconsistent with the established canon of construction that an act of Congress is meant to apply only within the territorial jurisdiction of the country unless a contrary intent is spelled out. In the other case the Court remanded to the Federal Communications Commission an authorization of new radiotelegraph circuits between the United States and certain foreign countries, in competition with existing facilities of another carrier, where the decision was on the ground that our national policy favors competition rather than on the ground that it would result in lower rates or better service.[58] Justice Frankfurter declared that it was simply not true that there is a national policy favoring competition under all circumstances, even under the Sherman Act. The standard under the Communications Act is the "public interest," and while competition may be a relevant factor, he held that the FCC's finding was arrived at "in an abstract, sterile way." It was therefore directed to reconsider the problem by evaluating the needs of the industry.

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[55] *South Buffalo Railway Co.* v. *Ahern*, 344 U. S. 367 (1953). For a complete analysis of FELA see: "The Federal Employers' Liability Act," *Law and Contemporary Problems*, Vol. 18, Part I, pp. 107–255 (Spring, 1953), and Part II, pp. 257–431 (Summer, 1953).

[56] *Pope* v. *Atlantic Coast Line Railroad Co.*, 345 U.S. 379 (1953).

[57] *Steele* v. *Bulova Watch Co.*, 344 U.S. 280 (1952).

There was one important anti-trust case during the Term, in which the Court held, in a 5–4 decision, that the owner of a morning newspaper and an evening paper in New Orleans who requires advertisers to buy space in both has not violated the Sherman Act.[59] There is no other morning paper in the city, but one other evening paper is published. Justice Clark declared that the teaching of the cases on tying arrangements is that the law has been violated when the seller enjoys a monopolistic position in the market for the "tying" product, or if a substantial volume of commerce in the "tied" product is restrained, because a reduction of competition is inferred from either factor. Declaring that the critical question is the dominance of this publisher in the New Orleans advertising market, the majority found that he did not have the requisite dominant position, as was indicated by the good health of the competing newspaper. In fact, the Court held that no one is forced to purchase a second distinct commodity; the two papers are under a single ownership and sell indistinguishable products in the same market. Thus, "no leverage in one market excludes sellers in the second, because for present purposes the products are identical and the market the same." Finally, the Court could find no showing of an intent to attempt to monopolize or to destroy competition or build monopoly. The publisher, it was concluded, was motivated by legitimate business aims. The four dissenting Justices thought it was clear that the publisher had a complete monopoly of the morning readers and used it to restrain unreasonably competition between its evening paper and the competing newspaper.[60]

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[58] *Federal Communications Commission* v. *RCA Communications*, 346 U.S. 86 (1953). The vote was 5–2. Justice Black dissented on the ground that the Commission's findings had substantial evidential support. Justice Douglas dissented on the ground that the record clearly supports the opposite conclusion, and that the Commission is so obviously wrong that a remand could serve no useful purpose.

[59] *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953). See S. C. Oppenheim, "Federal Antitrust Legislation: Guideposts to a Revised National Antitrust Policy," *Michigan Law Review*, Vol. 50, pp. 1139–1244 (June, 1952).

[60] For a first interpretation of Section 2(f) of the Robinson-Patman Act, which prohibits buyers from knowingly inducing or receiving a discrimination in price, see *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61 (1953). The Court held, with an eye to encouraging price bargaining, that the burden of proof relating to the justification of the price differential does not shift to the buyer once the Commission has shown that the buyer knew about it, largely on the theory that the buyer doesn't have

Finally, there were two decisions during this Term which held, in effect, that the anti-featherbedding section of the Taft-Hartley Act was not designed to outlaw all forms of featherbedding.[61] The statute makes it an unfair labor practice for a union to compel payment "for services which are not performed or not to be performed." In each case the decision turned on the fact that some service was actually performed, whereas three Justices dissented on the ground that the service was neither wanted by the employer nor useful to him.

4. FEDERAL JUDICIAL POWER

Nature of Judicial Power. The Federal Power Commission granted a company a license to build and maintain a hydroelectric project on the condition that the United States be allowed to use its transmission lines. On review, the Court of Appeals held that the Commission had no authority to attach the condition, ordered that it be stricken, and affirmed the order so modified. The Supreme Court held that when the lower court decided that the license should be issued without the condition, it usurped an administrative function.[62] The reviewing court's function ends when an error of law is identified; then the matter goes back to the agency for reconsideration. The statutory power of the court "to affirm, modify, or set aside" an order of the Commission, "in whole or in part," does not authorize it to decide whether the objectives of the federal statute may be achieved if the contested condition is stricken from the order.

The Court also had occasion to reaffirm the proposition that the normal requirements of a case or controversy must be met before a federal court can give relief under the Federal Declaratory Judgment Act of 1934.[63] A company had applied to a federal district court for a declaratory judgment to the effect that its carriage of motion pictures between points in Utah was interstate commerce, alleging that the state commission was threatening to regulate the traffic. Since the company was not requesting an adjudication that it has a right to do or have anything in particular, and was not asking the commission to make a specific order or take a concrete step, the Court held that it was in effect trying to win a case before it is commenced. Furthermore, the declaratory judgment procedure will not be used to prejudge issues committed for initial decision to an administrative body. The Court finally argued that "anticipatory judgment by a federal court to frustrate action by a state agency" was not com-

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information about the seller's costs. On the other hand, since the Commission is armed with investigatory and subpoena powers, it is in a better position to get the facts. Three dissenting Justices protested against what they regarded as an "enervating" reading of the statute.

[61] *American Newspaper Publishers Association* v. *NLRB*, 345 U.S. 100 (1953) (reproduction by printers of "bogus sets" of advertising matter already supplied by the advertisers); *NLRB* v. *Gamble Enterprises, Inc.*, 345 U.S. 117 (1953) (employment of a local orchestra by a theatre in connection with appearance of traveling bands). See Note, "Featherbedding and Taft-Hartley," *Columbia Law Review*, Vol. 52, pp. 1020–33 (Dec., 1952).

[62] *Federal Power Commission* v. *Idaho Power Company*, 344 U.S. 17 (1952).

[63] *Public Service Commission of Utah* v. *Wycoff Co.*, 344 U.S. 176 (1952).

patible with a proper federal-state relationship. Review procedures are normally ample to protect federal rights.

The Tompkins Rule. The Court held that since the Railway Labor Act does not prevent resort to a state-recognized cause of action for wrongful discharge, a plaintiff in a diversity action filed in a federal district court must show he has exhausted his administrative remedies under his employment contract if the state law so requires.[64] On the other hand, when a federal district court hears a suit in admiralty, its jurisdiction not deriving from diversity, the *Tompkins* rule is irrelevant.[65]

Habeas Corpus and State Prisoners. In 1950, in *Darr* v. *Burford*,[66] it was decided that a state prisoner may not apply to a federal district court for habeas corpus without first exhausting his state remedies, and that this included a petition to the Supreme Court for certiorari from a denial of habeas corpus on the merits by the highest state court. Whether the federal district court should give any weight to the fact that the Supreme Court denied certiorari was left unanswered. In *Brown* v. *Allen*,[67] a joinder of four cases, it was finally ruled formally that it is error for the district court to do so. Speaking for a majority of five on this aspect of the litigation, Justice Frankfurter repeated his well-known position[68] that no significance attaches to a denial of certiorari.[69] All it means is that for reasons seldom disclosed four Justices do not think the case ought to be reviewed. Since the Justices give less attention to habeas corpus petitions than to other applications for certiorari, and since many such petitions are badly drawn by the prisoners themselves, a denial of certiorari is not and cannot be *res judicata*. It is equally impossible to leave the district judge free to decide whether in denying certiorari the Supreme Court passed on the merits, since he "ordinarily knows painfully little of the painfully little we knew." In most cases the district judge would merely be speculating without information. He cannot be permitted to "give meaning to something that almost always must to him be meaningless."

Speaking for the minority on this point, Justice Reed took the position that the district judge should be free to accord a previous denial of certiorari such weight as he feels the record justifies. While not asserting that a denial of certiorari is *res judicata* of the issues presented, the minority thought that at least where the records are adequate the district court should be able to consider the denial of certiorari as relevant. Justice Frankfurter's reply was that this would vest an undefined discretion in the district judges to exercise "judicial impressionism," whereas the discretion imposed by the Habeas Corpus Act of 1867 must be subject to rational criteria.

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[64] *TWA* v. *Koppal*, 345 U.S. 653 (1953).

[65] *Levinson* v. *Deupree*, 345 U.S. 648 (1953).

[66] 339 U.S. 200.

[67] 344 U.S. 443 (1953).

[68] See memorandum in *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912 (1950).

[69] The Frankfurter opinion on this issue is printed under the title *Daniels* v. *Allen*, 344 U.S. 443 (1953).

Nevertheless, Justice Frankfurter discussed at great length the bearing of state court proceedings on habeas corpus applications in the federal district courts. He recognized that in these attempts to get federal examination of state convictions most claims are without merit, and that an unrestricted opening of the doors of federal courts would burden them unduly and weaken state law enforcement. On the other hand, not all applications can be dismissed as frivolous, since this would in fact abolish this jurisdiction. At the same time the federal judge cannot ignore all that has gone before. While it is impossible to formulate fool-proof standards which can be applied automatically, Justice Frankfurter discussed certain standards for guidance of the district courts.

Justice Frankfurter thought that the concern about federal district courts discharging state prisoners was "a baseless fear, a bogey man." He pointed out that during the past four years only five state prisoners won ultimate release in this fashion, though many hundreds tried. He also denied that this is a case of a lower federal court sitting in judgment of a higher state court; it is merely an aspect of federal supremacy under which federal law is higher than state law. State judges think otherwise. The Committee on Habeas Corpus of the Conference of Chief Justices, reporting in June, 1953, suggested changing the federal statute to provide that federal district courts should have power to act only if the U. S. Supreme Court, in denying relief on review of the state court, expressly reserves the right of the prisoner to apply for habeas corpus in a federal district court. But the whole Conference went even further, on August 22, 1953, by reaffirming a 1952 resolution which favored review of the final judgments of the state's highest court only by the U. S. Supreme Court. At the same time both the Committee and the Conference agreed that the states should see to it that their post-conviction procedures are as broad in scope as federal process under habeas corpus, and that there should be a complete record in each case showing how the merits of claimed federal constitutional rights were considered and disposed of.[70]

The views of the state judges were given support by Justice Jackson, who objected to the Supreme Court's use of the general language of the Fourteenth Amendment to subject state courts to increasing federal control, especially in the field of criminal law, and to *ad hoc* determinations of due process issues "by personal notions of justice instead of by known rules of law." He complained that "this Court has sanctioned progressive trivialization of the writ until floods of stale, frivolous and repetitious petitions inundate the docket of the lower courts and swell our own." The fact that only a tiny number of the hundreds of petitions filed are granted was proof to him that the procedure encourages frivolous cases. He insisted that a denial of certiorari must mean something, since "it is just one of the facts of life that today every lower court does attach importance to denials." While a denial of certiorari creates no precedent, and therefore has no significance as *stare decisis*, Justice Jackson thought it is *res judicata* for the case in which it was brought up. His conclusion was that whether or not certiorari has been denied, no lower federal court ought to entertain the habeas corpus petition of a state prisoner unless the petition raises a jurisdictional question involving federal law as to which there is no state remedy, or unless the prisoner was improperly prevented from making a record on a question which could be presented.[71] The view that a denial of certiorari should be *res judicata* for most cases is open to the objection that it would require the Court to consider every petition on its merits. This would saddle the Court with a tremendous burden of work now better done through hearings in the district courts, and would tend to defeat the very purpose of the discretionary writ.

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[70] *State Government*, Vol. 26, pp. 241–45 (Oct., 1953). See also the suggestions of the Attorney General of Indiana, James A. Emmert, "Use and Misuse of Habeas Corpus Writ by Prisoners," *Proceedings of the Conference of the National Association of Attorneys General* (1946), pp. 53–59. Consult: O. John Rogge and Murray A. Gordon, "Habeas Corpus, Civil Rights, and the Federal System," *University of Chicago Law Review*, Vol. 20, pp. 509–28 (Spring, 1953); Melvin E. Beverly, "Federal-State Conflicts in the Field of Habeas Corpus," *California Law Review*, Vol. 41, pp. 483–98 (Fall, 1953).

Another aspect of the exhaustion of state remedies doctrine in connection with federal habeas corpus was litigated in *Sweeney* v. *Woodall.*[72] The issue was left over from *Johnson* v. *Dye,*[73] where a fugitive from a Georgia chain gang, after arrest in Pennsylvania, without going as far as he could in the state courts through habeas corpus, tried the federal courts. The Court of Appeals ruled in the *Johnson* case that the doctrine of exhaustion of state remedies in habeas corpus cases did not apply to extradition. The Supreme Court reversed in a one-sentence *per curiam* opinion which merely cited *Ex parte Hawk.*[74] While the *Hawk* rule was that a state convict must exhaust all of his state remedies before going to a federal court, the question still remained whether this referred to the remedies available in the demanding or in the asylum state. In the *Sweeney* case, the Court held that the fugitive must exhaust the remedies of the demanding state. Woodall was a fugitive from an Alabama prison who was arrested in Ohio. Alleging brutal mistreatment in Alabama, to which he would again be subject if returned, he litigated an application for habeas corpus all through the Ohio courts, including a petition for certiorari in the Supreme Court of the United States. Then he started over again in a federal district court. The Supreme Court ruled that Woodall made no showing that relief was unavailable to him in the courts of Alabama. By resorting to self-help, he had changed his status from a prisoner of Alabama to that of a fugitive from Alabama. "But this should not affect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama." Both the rendition clause of the Constitution and the federal extradition statute, the Court noted, contemplate the prompt return of a fugitive from justice as soon as the demanding state asks for him. "Considerations fundamental to our federal system," including considerations of convenience, require the prisoner to test the claim of unconstitutional treatment by Alabama. In a concurring opinion Justice Frankfurter argued that it ought to be assumed that Alabama's prison officials will not prevent Woodall from invoking the aid of the local courts. Justice Douglas, who dissented alone, said that if Woodall's allegations are true, he will suffer torture and even risk death if he tries to get relief in Alabama. He rebelled at the thought "that any human being, Negro or white, should be forced to run a gamut of blood and terror in order to get his constitutional rights."

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[71] While a majority of the Court agreed that it was error for the lower federal courts in the *Brown* v. *Allen* litigation to give weight to the previous denial of certiorari, a majority of six also held that on the facts it was not reversible error. On this point see Justice Black's dissenting opinion at 344 U.S. 548–50, and Justice Frankfurter's at 344 U.S. 554–60.

[72] 344 U.S. 86 (1952).

[73] 175 F. 2d 250 (3d Cir. 1949), reversed, 338 U.S. 864 (1949).

[74] 321 U.S. 114 (1944).

Relations of Federal and State Courts. That ordinarily it is preferable for the state courts to construe new state statutes before federal courts undertake to do so was underscored in *Albertson* v. *Millard.*[75] Five days after the Governor of Michigan signed a Communist Control Act, the Communist party of Michigan asked for an injunction and declaratory judgment in the federal district court on due process grounds. Losing there, the party appealed to the Supreme Court, which vacated judgment and remanded the cause with directions to hold all proceedings in abeyance a reasonable time pending construction of the statute by the state courts. Justice Douglas thought that the issues would not be made any clearer by any decision of the state courts.

In another case, *Edelman* v. *California,*[76] the Court held it is without power to decide whether constitutional rights have been denied by a state when the federal questions are not seasonably raised in accordance with the requirements of state law. Edelman had been convicted of violating a vagrancy statute, and the appellate court affirmed by default. Since California permits affirmance in criminal cases where the defendant fails to appear, the noncompliance with local law was an adequate state ground for the decision below.[77]

In deference to the dignity of the states, it has always been the policy of both Congress and the Supreme Court to review a judgment or decree of a state court only if the judgment or decree is final.[78] Accordingly, the Court refused to review, by certiorari, a temporary injunction issued by an Alabama court to enjoin peaceful picketing by a union.[79] The Court insisted that far from being a technicality, this policy is an important factor in the smooth working of our federal system. Justices Black and Douglas dissented on the theory that since the damage done by an interlocutory order is often irreparable, the assertion by the state court of the power to act in an interlocutory way is final unless the rule of finality is regarded as purely mechanical.

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[75] 345 U.S. 242 (1953). See Note, "Power to Decline the Exercise of Federal Jurisdiction," *Minnesota Law Review,* Vol. 37, pp. 46–64 (Dec., 1952).

[76] 344 U.S. 357 (1953). See Paul J. Mishkin, "The Federal 'Question' in the District Courts," *Columbia Law Review,* Vol. 53, pp. 157–96 (Feb., 1953).

[77] In *Dixon* v. *Duffy,* 344 U.S. 143 (1952), a state judgment was vacated and the case remanded in order to give the Supreme Court of California a chance to determine officially whether or not the judgment rested on an adequate state ground.

[78] U.S. Code, Title 18, Section 1257.

[79] *Montgomery Building & Construction Trades Council* v. *Ledbetter Erection Co.,* 344 U.S. 178 (1952).

Judicial Review of the Military. There were two important cases during the Term testing the scope of judicial review of military decisions. *Burns* v. *Wilson*[80] dealt with two soldiers who had been tried by Army courts-martial on the Island of Guam for rape and murder and sentenced to death. The sentences were confirmed by the President, and the defendants exhausted all remedies available under the Articles of War for review by military tribunals. Then they applied for habeas corpus in the District Court of the District of Columbia, alleging denial of several due process rights, with some special emphasis upon the use of coerced confessions. The District Court dismissed without hearing evidence, holding merely that the court-martial had jurisdiction over the defendants, the crime, and the sentence. The Court of Appeals affirmed, but reviewed in detail the mass of evidence in the transcripts and other proceedings. By a 6–2 vote the Supreme Court affirmed. Because of the peculiar relationship between the civil and military law, the Chief Justice declared, the court's inquiry in military habeas corpus has always been narrower in scope than in civil cases. Like state law, military law is a separate jurisprudence, and the Supreme Court has no supervisory powers over the military courts: Congress, to whom the whole matter is entrusted by the Constitution, has provided a complete system of review within the military system. Only recently Congress revised completely the Articles of War and adopted a Uniform Code of Military Justice, thereby furnishing careful guarantees of a fair trial and review, including a post-conviction remedy for collateral attacks on judgments. Thus, like the state courts, the military courts have the same responsibilities that the regular federal courts have to protect constitutional rights.

Nevertheless, the Chief Justice declared, the civil courts do have jurisdiction over an application for habeas corpus from a military prisoner, but if the military decision has dealt fully and fairly with an allegation raised in the application, the civil court may not grant the writ merely to reevaluate the evidence. If the military courts had refused to consider the serious due process claims advanced by the petitioners, then the District Court would have had the power to review them *de novo.* The records show, however, that the military courts considered all allegations now made. The rule of the *McNabb* case[81] against the use of coerced confessions, it was held, is a rule of evidence only in the federal civil courts, since the source of the rule is not due process, but rather this Court's power of supervision over the administration of justice in the federal courts. Petitioners have failed to show that military review was inadequate legally, and they have no right to make a new record and prove their case *de novo* in the District Court. In dissent, Justices Douglas and Black took the position that in reviewing military trials civil courts are not limited to the question of "jurisdiction" in the historic sense of the term. They believed that the undisputed facts made out a *prima facie* case that the rule on coerced confessions had been violated, since the defendants had been held incommunicado and questioned repetitiously without benefit of counsel for a period of five days.

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[80] 346 U.S. 137 (1953). Cf. *Hiatt* v. *Brown,* 339 U.S. 105 (1950). See the symposium on military justice in *Vanderbilt Law Review,* Vol. 6, pp. 161–365 (Feb., 1953), and particularly James Snedeker's article, "Habeas Corpus and Court-Martial Prisoners"; James Snedeker, *Military Justice and the Uniform Code* (Boston, 1953); Mandeville Mullally, Jr., "Military Justice: The Uniform Code in Action," *Columbia Law Review,* Vol. 53, pp. 1–27 (Jan., 1953); Henry M. Hart, Jr., "The Power of Congress to Limit the Jurisdiction of Federal Courts," *Harvard Law Review,* Vol. 66, pp. 1362–1402 (June, 1953).

[81] *McNabb* v. *United States,* 318 U.S. 332 (1943).

In *Orloff* v. *Willoughby,*[82] by a 6–3 vote, the Court declined to interfere with the Army's classification of a physician inducted under the Doctor's Draft Act. Because of age, Orloff was not liable to induction except under the special act. Although doctors have always been given commissions in the Army, Orloff was refused because he declined on grounds of conscience and constitutional privilege to execute a loyalty certificate requiring disclosure of membership in organizations on the Attorney General's list. While the Army finally agreed that he was entitled to serve as a doctor, Orloff claimed that he was either entitled to a commission or to a discharge, and petitioned for habeas corpus. The Supreme Court ruled that the statutes do not require all personnel inducted under the Doctor's Draft Act to be either commissioned or discharged. Justice Jackson said that the commissioning of Army officers is a matter of discretion within the province of the President as Commander-in-Chief, not subject to control by the courts. Orloff was subject to conscription under the special act. "But, if he is the first to be denied a commission," said Justice Jackson, "it may also be that he is the first doctor to haggle about questions concerning his loyalty. It does not appear to us that it is the President who breaks faith with Congress and the doctors of America. We are not easily convinced that the whole military establishment is out of step except Orloff." There is no doubt of the fact that Orloff may refuse on the basis of constitutional privilege to withhold facts about membership in the Communist party, but it does not follow that even so he is entitled to an appointment to a position of honor and trust. Finally, the Court ruled that one who has been lawfully inducted may not by habeas corpus obtain judicial review of his assignments to duty. Commanding officers must have large areas of discretion in such matters, and "judges are not given the task of running the Army."

In his dissenting opinion Justice Black pointed out that since 1847 Army doctors have served only when commissioned as officers, and that in Orloff's case the Army was breaking faith with Congress and the country's doctors. Although the government conceded that Orloff was entitled to be assigned medical duties, Justice Black thought that this point was still in controversy and ought to be resolved by the District Court through a remand. In a separate dissenting opinion, Justice Frankfurter took the position that a doctor-draftee who is found unfit for a commission is entitled, under the special act, to a discharge. In this fashion the courts will not be required to meddle with the management of the Army by issuing direct orders, since the draftee is simply released from duty.

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[82] 345 U.S. 83 (1953). See Note, "Habeas Corpus and Judicial Review of Draft Classifications," *Indiana Law Journal,* Vol. 28, pp. 244–56 (Winter, 1953); Jacobus tenBroek, "Wartime Power of the Military over Citizen Civilians within the Country," *California Law Review,* Vol. 41, pp. 167–208 (Summer, 1953).

Eleventh Amendment. In an original suit by New Jersey against New York and New York City for injunctive relief against water diversion, Pennsylvania was permitted to intervene. The Court denied Philadelphia's motion to intervene, but held that this ruling involved no interpretation of the Eleventh Amendment.[83] The *parens patriae* doctrine, it was noted, means that when a state is a party to a suit "involving a matter of sovereign interest" it must be assumed that it represents all of its citizens. Since Philadelphia represented only a part of the citizens of the state residing in the watershed, the Court was apprehensive of being drawn into an "intramural dispute." There are also New Jersey cities and even large industrial plants which might insist upon the right to intervene. The Court's original jurisdiction, it was stated, "should not be thus expanded to the dimensions of ordinary class actions."

International Law. Larsen, a Danish seaman, while temporarily in New York, joined the crew of a ship of the Danish flag, owned by a Danish citizen. He signed the ship's articles, which were written in Danish, and which provided that the rights of the crew members would be governed by Danish law and by the owner's contract with a Danish union, of which Larsen was a member. Larsen was injured in the course of employment, while aboard the ship in Havana harbor. He brought suit in the federal district court for the Southern District of New York, under the Jones Act of 1920, which permits "any seaman" to sue under it. The Supreme Court ruled that Congress did not intend to give all alien seamen anywhere in the world access to our courts, and thus reversed a verdict in favor of Larsen.[84] The Jones Act, said Justice Jackson, was enacted "with regard to a seasoned body of maritime law." The Court is committed to the proposition that an act of Congress ought never to be construed to violate the law of nations if any other interpretation is possible. It is also established that if possible a statute will not be construed as applying to foreigners in connection with acts done by them outside this country.

The Court held that it was not conclusive that the owner had many commercial contacts with United States ports; this is the virtue of sea-borne commerce. If every contact is exploited to the full, there is the danger that a "multiplicity of conflicting and overlapping burdens would blight international carriage by sea." That is why the courts of commercial nations prefer to defer to "international maritime law of impressive maturity and universality," which has the force of law through general acceptance. In this case, Justice Jackson ruled, most of the "connecting factors" favored application of Danish law. For example, both the sailor and the shipowner were nonresident aliens, the wrongful act took place outside the United States, the flag was foreign, the parties to the contract intended to apply Danish law, and a ready remedy was available under Danish law.

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[83] *New Jersey* v. *New York*, 345 U.S. 369 (1953). Two Justices dissented on the ground that the claim of Philadelphia to becoming a party was as good as that of New York City, which was already a party.

[84] *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953).

Federal Trial Examiners. By a 6–3 decision, the Court made it clear that while trial examiners appointed under Section 11 of the Administrative Procedure Act were intended by Congress to be a special class subject to special control by the Civil Service Commission, their position is not a constitutionally protected one, but one which depends entirely upon the will of Congress.[85] Accordingly the Court approved a number of rules worked out by the Commission. For example, the Court rejected the claim that all hearing examiners in any one agency must be classified in the same grade, and approved a Commission classification according to skill, experience, and ability. The Court also regarded as permissible a rule which permits the agency to decide whether or not a vacancy should be filled by promotion from among present examiners, and decided that cases do not have to be rotated among the examiners in a mechanical fashion. The three dissenters thought that these regulations frustrated the intent of Congress to give trial examiners "a new status of freedom from agency control" by permitting agency heads to influence cases through the power of classification and assignment.[86]

II. QUESTIONS OF STATE POWER

1. DUE PROCESS OF LAW

Loyalty Oaths. The 1952 Term again illustrated the importance in our day of litigation posing civil liberties issues.[87] This was especially true of cases coming up from the state courts involving due process questions. Among them, the loyalty oath case of *Wieman* v. *Updegraff*,[88] where all the Justices were, *mirabile dictu*, in agreement, is of outstanding significance. As part of the effort of the states to combat subversive activities, Oklahoma adopted a statute in 1951 which required all state officers and employees to take an oath. Among other things, they were required to swear that they had not been members of subversive organizations within the last five years. Organizations were described as subversive if they advocate, teach, or justify the overthrow of government by any unlawful means, including the Communist party, any organization affiliated with it directly or indirectly, the Third International, and any association on the list of the Attorney General or of any other authorized agency of the United States.

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[85] *Ramspeck* v. *Federal Trial Examiners Conference*, 345 U.S. 128 (1953). See Note, "The Status of the Trial Examiner in Administrative Agencies," *Harvard Law Review*, Vol. 66, pp. 1065–81 (April, 1953); Simon Tucker, "The Administrative Law of Federal Hearing Examiner Personnel," *George Washington Law Review*, Vol. 21, pp. 38–60, 198–240 (Oct., Dec., 1952); Lloyd D. Musolf, *Federal Examiners and the Conflict of Law and Administration* (Baltimore, 1953).

[86] In *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33 (1952), the Court held that an objection to an ICC hearing on the ground that the examiner had not been appointed pursuant to Section 11 of the Administrative Procedure Act must first be made before the agency itself, and that it is too late to make it for the first time in a reviewing court.

[87] See Zechariah Chafee, Jr., *How Human Rights Got into the Constitution* (Boston, 1952); American Jewish Congress and National Association for the Advancement of Colored People, *Civil Rights in the United States: 1952* (New York, 1953); American Civil Liberties Union, *Freedom, Justice, Equality: Report on Civil Liberties, January 1951–June 1953* (New York, 1953); John Lord O'Brian, "New Encroachments on Individual Freedom," *Harvard Law Review*, Vol. 66, pp. 1–27 (Nov., 1953); Charles R. Nixon, "Freedom vs. Unity: A Problem in the Theory of Civil Liberty," *Political Science Quarterly*, Vol. 68, pp. 70–88 (March, 1953); Howard Jay Graham, "Procedure to Substance—Extra-Judicial Rise of Due Process, 1830–1860," *California Law Review*, Vol. 40, pp. 483–500 (Winter, 1952–3); Kenneth A. Poole, "Statutory Remedies for the Protection of Civil Rights," *Oregon Law Review*, Vol. 32, pp. 210–53 (April 1953); Marion S. Riggs, "The

A citizen-taxpayer brought an action to enjoin the payment of salaries to certain members of the staff of Oklahoma A. & M. College who failed to take the oath within the allotted thirty days. Limiting the list of proscribed organizations to those on the Attorney General's list at the time of its passage, the Oklahoma Supreme Court held the act valid. The Supreme Court of the United States reversed. Justice Clark pointed out that in all previous cases involving loyalty oaths, such as the *Garner*, *Adler* and *Gerende* cases,[89] the Court was assured that knowing membership in a proscribed organization, or *scienter*, was a requirement of the statute. Since the Oklahoma Supreme Court refused to give these non-jurors a chance to take the oath as interpreted, and on petition for rehearing rejected the argument that failure to permit them to take the oath as interpreted in the federal precedents violated due process, it was concluded that the state holding was that knowledge is not a factor under the Oklahoma statute.

Since membership alone is set up as a conclusive presumption of disloyalty, the statute is unconstitutional, because "membership may be innocent. A state servant may have joined a proscribed organization unaware of its activities and

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Existence of Civil Rights at Common Law," *South Carolina Law Quarterly*, Vol. 5, pp. 449–57 (March, 1953); Note, "The Proper Scope of the Civil Rights Acts," *Harvard Law Review*, Vol. 66, pp. 1285–1300 (May, 1953).

[88] 344 U.S. 183 (1952). See *The States and Subversion*, ed. Walter Gellhorn (Ithaca, 1952); Note, "Effectiveness of State Anti-Subversive Legislation," *Indiana Law Journal*, Vol. 28, pp. 492–520 (Summer, 1953); Note, "State Control of Subversion: A Problem in Federalism," *Harvard Law Review*, Vol. 66, pp. 327–34 (Dec., 1952); Clark Byse, "A Report on the Pennsylvania Loyalty Act," *University of Pennsylvania Law Review*, Vol. 101, pp. 1–29 (Jan., 1953); Eleanor Bontecou, *The Federal Loyalty-Security Program* (Ithaca, 1953); George K. Gardner, "Bailey v. Richardson and the Constitution of the United States," *Boston University Law Review*, Vol. 33, pp. 177–203 (April, 1953); Ralph S. Brown, Jr. and John D. Fassett, "Security Tests for Maritime Workers: Due Process under the Port Security Program," *Yale Law Journal*, Vol. 62, pp. 1163–1208 (July, 1953); Comment, "Loyalty and Private Employment," *Yale Law Journal*, Vol. 62, pp. 954–84 (May, 1953); National Industrial Conference Board, *Industrial Security: Combating Subversion and Sabotage* (1952).

[89] *Garner* v. *Board of Public Works*, 341 U.S. 716 (1951); *Adler* v. *Board of Education*, 342 U.S. 485 (1952); *Gerende* v. *Board of Supervisors*, 341 U.S. 56 (1951).

purposes. In recent years, many completely loyal persons have severed organizational ties after learning for the first time of the character of groups to which they had belonged." On this point Justice Clark quoted the weighty testimony of Mr. J. Edgar Hoover. Furthermore, "at the time of affiliation, a group itself may be innocent, only later coming under the influence of those who would turn it toward illegitimate ends." The opposite may also occur. It follows that since under the Oklahoma statute association alone determines disloyalty, whether or not it existed innocently or knowingly, individual freedom of movement is inhibited and "the flow of democratic expression and controversy" is stifled at one of its chief sources. Therefore, "indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process."

Finally, said Justice Clark, it is not necessary to consider whether an abstract right to public employment exists. "It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." In a separate opinion Justice Black deplored the "suppressive laws and practices" which are now the fashion, denounced test oaths as "notorious tools of tyranny," and as "unspeakably odious to a free people," and advanced a strong argument for complete free speech for all. He also asserted, as before, that the statute was a bill of attainder. Justice Frankfurter emphasized, in a noble statement, that exercising the right of association was peculiarly characteristic of our people, that joining is an exercise of free speech and free inquiry, and that freedom of speech and thought are especially important for teachers, particularly in a system which rests upon public opinion.

Freedom of Speech. An interesting free speech issue was decided in *Poulos* v. *New Hampshire*.[90] The City Council of Portsmouth, New Hampshire, refused a Jehovah's Witness a license to conduct a religious service in a public park, although Poulos offered to pay all proper fees and complied with all procedural requirements of the applicable city ordinance. Poulos went ahead and held his service anyhow, until arrested. On appeal from a motion to dismiss the complaint, the state Supreme Court ruled that the city may require licenses, that the ordinance is valid on its face, but that it must be administered fairly and without discrimination. A trial followed, and the trial court held that the refusal of the license by the city was arbitrary and unreasonable, but that Poulos should have raised this question by proper civil proceedings instead of delib-

[90] 345 U.S. 395 (1953). On free speech issues see: Harold L. Cross, *The People's Right to Know* (New York, 1953); Alexander Meiklejohn, "What Does the First Amendment Mean?," *University of Chicago Law Review*, Vol. 20, pp. 461–79 (Spring, 1953); Morris L. Ernst and Arthur J. Katz, "Speech: Public and Private," *Columbia Law Review*, Vol. 53, pp. 620–31 (May, 1953); Henry M. Kittleson and J. Allen Smith, "Free Speech (1949–1952): Slogans v. States' Rights," *University of Florida Law Review*, Vol. 5, pp. 227–60 (Fall, 1952); Glenn Abernathy, "Assemblies in the Public Streets," *South Carolina Law Quarterly*, Vol. 5, pp. 384–416 (March, 1953); Note, "Obscenity—Construction and Constitutionality of Statutes Regulating Obscene Literature," *New York University Law Review*, Vol. 28, pp. 877–90 (April, 1953).

erately violating the ordinance. The New Hampshire Supreme Court agreed, ruling that the ordinance was valid on its face, on the authority of *Cox* v. *New Hampshire*,[91] and that Poulos' proper remedy was to seek a review by certiorari of the unlawful refusal of the Council to grant the license, not to hold public religious services in the park without a license, and then defend because the refusal of the license was arbitrary. In the United State Supreme Court Poulos argued that no license for conducting religious services in a public park may be required, and that the delay which would follow from seeking judicial review of an arbitrary denial of a license results in an unconstitutional abridgment of freedom of speech and religion.

The state court was affirmed. Since the ordinance had to be administered fairly, Justice Reed declared for the majority, it was a routine police measure, not a previous restraint on liberty, under which the licensing officials had no discretionary power, no authority to discriminate, no control over speech. He admitted that "judicial correction of arbitrary refusal by administrators to perform official duties under valid laws is exulcerating and costly." Nevertheless, he said that to allow people to proceed to hold public meetings without prior arrangement is apt to cause breaches of the peace or create public dangers. "Delay is unfortunate," he stated, "but the expense and annoyance of litigation is a price citizens must pay for life in an orderly society." It was held that due process does not prevent a state from requiring that in the public interest the reasonable method of correcting the error be by certiorari.

Justice Black described this as one of a series of recent decisions "which fail to protect the right of Americans to speak freely." The *Cox* case, he argued, dealt only with street parades and had nothing to do with a free speech question. He thought the procedure would be appropriate for business matters, but inappropriate here because the First Amendment gives free speech a special protection. So also Justice Douglas maintained that when a legislature proscribes free speech it acts unlawfully and the citizen can take matters in his own hands. The reason is the preferred position of the freedoms of the First Amendment, which says that there shall be *no* law which abridges them. He argued that the licensing of speech is a prior restraint, that "there is no free speech in the sense of the Constitution when permission must be obtained from an official before a speech can be made."

Reaffirming a long list of recent decisions on the subject, the Court ruled that Virginia may enjoin peaceful picketing carried on for purposes in conflict with the state Right to Work Act, which outlaws both the closed shop and the yellow-dog contract.[92] Justice Douglas protested that when peaceful picketing is used as an instrument of publicity, it is a form of speech protected by the Constitution, but this is a lost cause. Only Justice Black joined him in dissent.

Freedom of Religion. Fowler v. *Rhode Island*[93] posed a variation of the issue at stake in the *Poulos* case. Pawtucket, Rhode Island, has an ordinance which prohibits the making of political or religious speeches in any public park, though it permits religious or political gatherings if public addresses are not made. In what the state conceded to be a religious meeting, a Jehovah Witness minister delivered a sermon to an orderly meeting in a park. The state admitted in oral argument that the ordinance did not prohibit church services in the park. The Court held unanimously that it was plain that a religious service of Jehovah's Witnesses was treated differently than religious services of other sects. This, said Justice Douglas, "amounts to the state preferring some religious groups over this one." He noted that the religious service of this sect is different, less ritualistic and formal than some, but "it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment. Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings. Sermons are as much a part of a religious service as prayers. . . . To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another."[94]

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[91] 312 U.S. 569 (1941).

[92] *Local Union No. 10, A. F. of L.* v. *Graham*, 345 U.S. 192 (1953).

[93] 345 U.S. 67 (1953). See Leo Pfeffer, *Church, State and Freedom* (Boston, 1953); Wilber G. Katz, "Freedom of Religion and State Neutrality," *University of Chicago Law*

The *Kedroff* case[95] involved a more subtle question with pluralistic overtones. At issue was the right to occupy and use the St. Nicholas Cathedral in New York. One of the contesting parties claimed appointment from the Russian Orthodox Church of North America, a corporation created by the legislature of New York in 1925, whose archbishop was elected by a sobor (convention) of the American churches in 1924, when they broke away from the mother church in Moscow. The other party was appointed by the supreme authority of the Russian Orthodox Church in Moscow. The New York Court of Appeals held, in a 4–3 decision, that the prelate appointed by the ecclesiastical officials in Moscow was not entitled to the cathedral on the basis of a 1945 state statute which in effect brought all of the New York churches formerly subject to the administrative jurisdiction of the Moscow authorities into an autonomous

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Review, Vol. 20, pp. 426–40 (Spring, 1953); Leo Pfeffer and James M. O'Neill, debating "The Meaning of the Establishment Clause," *Buffalo Law Review*, Vol. 2, pp. 225–79 (Spring, 1953); George E. Reed, "Church-State and the Zorach Case," *Notre Dame Lawyer*, Vol. 27, pp. 529–51 (Summer, 1952); James E. Harpster, "Religion, Education and the Law," *Marquette Law Review*, Vol. 36, pp. 24–66 (Summer, 1952); William W. Boyer, Jr., "Religious Education of Public School Pupils in Wisconsin," *Wisconsin Law Review*, Vol. 1953, pp. 181–255 (March, 1953), "Property Rights of Religious Institutions in Wisconsin," *Marquette Law Review*, Vol. 36, pp. 329–70 (Spring, 1953), "Religion and the Police Power in Wisconsin," *Marquette Law Review*, Vol. 37, pp. 1–34 (Summer, 1953).

[94] Justice Frankfurter concurred except insofar as the opinion was based on the First Amendment. He thought the Equal Protection Clause of the Fourteenth Amendment was controlling.

[95] *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952). See the astute remarks of Mark De Wolfe Howe, "Political Theory and the Nature of Liberty," *Harvard Law Review*, Vol. 67, pp. 91–95 (Nov., 1953).

North American metropolitan district. The statute directed that all the churches formerly subject to the Moscow synod and patriarchate should in the future be under the hierarchy of the American church. The Russian patriarch was elected in 1945 in Moscow by a sobor recognized by all parties to this litigation as a true sobor held in accordance with church canons.

With Justice Jackson dissenting alone, the Court held that the New York statute, which undertook to transfer control of the New York Churches of the Russian Orthodox religion from the patriarch and synod of Moscow to the governing authorities of the American church, was unconstitutional. Said Justice Reed: "Such a law violates the Fourteenth Amendment. It prohibits the free exercise of religion."[96] He also pointed out that the state required the New York churches to conform with the faith, doctrine, and canon law of the Orthodox Church, an obviously improper thing for a legislature to do. In reply to the argument of the New York Court of Appeals that the statute was designed to protect the American churches from the subversive influences of the Russian state, Justice Reed stated: "Legislative power to punish subversive action cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense. But in this case no problem of punishment for the violation of law arises. There is no charge of subversive or hostile action by any ecclesiastic. Here there is a transfer by statute of control over churches. This violates our rule of separation between church and state."

The Court leaned heavily on the post-Civil War case of *Watson* v. *Jones*,[97] which came up on diversity long before the Fourteenth Amendment amounted to anything, and was decided, in pre-*Tompkins* days, on the basis of general law. This case defended the right of the officials of a hierarchical church to control all property of the church, as against the claims of schismatical elements. The opinion of this case, said Justice Reed, radiates "a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." Contrary to the holding of the New York court, Justice Reed said that the statute goes far beyond merely providing that the trustees of the Cathedral should use it consistently with the desires of the members of the Russian Church in America. "By fiat it displaces one church administrator with another. It passes the control of matters directly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment."[98]

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[96] Just whose freedom was prohibited was not made clear. The Fourteenth Amendment speaks only of the rights of "persons."

[97] 13 Wall. 679 (1871).

[98] Justice Reed also held that New York's legislative application of *cy-pres* doctrine to this trust did not avoid the constitutional objection. It was explained that *Church of Jesus Christ of Latter-Day Saints* v. *United States*, 136 U.S. 1 (1890), upon which reliance was had, dealt with a seizure of property based on the general rule that where a charitable

Justice Jackson, in dissent, took the position that this was merely a dispute over real estate which the Fourteenth Amendment leaves to the state courts to decide without federal interference. He thought that since the New York courts could have made the same decision without the statute, it is for each state to say which branch of government should establish a rule for this sort of controversy. He argued that when this church incorporated under New York law, it submitted all of its temporal affairs to New York law. Finally, he did not think that New York law "must yield to the authority of a foreign and unfriendly state masquerading as a spiritual institution," nor could he agree that the principle of separation of church and state means that a state must submit property rights to settlement by canon law.

Confessions. In the so-called Reader's Digest murder case, *Stein* v. *New York,*[99] three men, Stein, Cooper, and Wissner, were convicted of murder after jury trial and sentenced to death. The evidence included written confessions by Cooper and Stein, each implicating all three. All objected to the introduction of the confessions on the ground that they had been coerced. The issue of coercion was heard by the trial court in the presence of the jury, and the judge left the issue to the jury. A great deal of evidence was submitted to the jury in addition to the confessions. Both confessions were made at a time when the prisoners were illegally held incommunicado.

Cooper was questioned from 8 P.M. to about 1 A.M. and the following day from 10 A.M. to 6 P.M. Stein was questioned an hour in the morning, from two to three hours in the afternoon, and then from 7 P.M. to 2 A.M. There was no direct testimony of physical violence or threats, and police testimony that violence and threats were not used was unshaken. No defendant took the stand. The jury was instructed to consider the confessions only if it found them to have been voluntary. Since the jury rendered a general verdict, the jury could have concluded that the confessions had been coerced and still convict.

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corporation is dissolved as unlawful, the sovereign distributes the property, according to the *cy-pres* doctrine, to objects of charity and usefulness. In *Kedroff* there was no such dissolution or seizure.

[99] 346 U.S. 156 (1953). See Francis A. Allen, "Due Process and State Criminal Procedures: Another Look," *Northwestern University Law Review*, Vol. 48, pp. 16–35 (March–April, 1953); Marne S. Matherne, "Pretrial Confessions—A New Rule," *Tennessee Law Review*, Vol. 22, pp. 1011–24 (June, 1953); Jerome Hall, "Police and Law in a Democratic Society," *Indiana Law Journal*, Vol. 28, pp. 133–77 (Winter, 1953); Emily Marx, "Psychosomatics and Coerced Confessions," *Dickinson Law Review*, Vol. 57, pp. 1–23 (Oct., 1952). On various aspects of the self-incrimination problem see: Osmond K. Fraenkel, "The Fourth Amendment and the Federal Courts," *Lawyers Guild Review*, Vol. 12, pp. 73–77 (Spring, 1952); Louis B. Boudin, "The Constitutional Privilege in Operation," *Lawyers Guild Review*, Vol. 12, pp. 128–49 (Summer, 1952); John M. Murray, "The Privilege against Self-Incrimination versus Immunity: Proposed Statutes," *Georgetown Law Journal*, Vol. 41, pp. 511–24 (May, 1953); James B. Smith, "The Privilege of Silence and the Legislative Process," *Georgetown Law Journal*, Vol. 41, pp. 330–62 (March, 1953); Alan F. Westin, "Do Silent Witnesses Defend Civil Liberties?," *Commentary*, Vol. 15, pp. 537–46 (June, 1953); Laurent B. Frantz and Norman Redlich, "Does Silence Mean Guilt?," *The Nation*, Vol. 176, pp. 471–77 (June 6, 1953).

Speaking for a majority of six, Justice Jackson ruled that the procedure involved in this case was constitutional. For one thing, it leans heavily on the jury; under New York practice the judge can rule a confession inadmissible, but cannot make a final determination that it is admissible. But not everything is left to the jury, since the judge can set the verdict aside if he thinks the evidence does not warrant it. It was argued, however, that the defendants could not have taken the stand to support the charge of coercion without subjecting themselves to general cross-examination, through which the prosecution could have impeached their credibility, since each had an impressive criminal record. The answer in part was that under New York law trial courts have an exceptional discretion to prevent abuse and injustice, and that the defendants had not asked for a ruling as to the scope of cross-examination. But mainly the Court held that as in trial of every other issue, in the trial of the coercion issue the accused must choose between the disadvantage of silence and that of testifying. Said Justice Jackson: "The Constitution safeguards the right of a defendant to remain silent; it does not assure him that he may remain silent and still enjoy the advantages that might have resulted from testifying." Finally, it was held that the Fourteenth Amendment does not forbid jury trial of the issue of coercion. "The states are free to allocate functions as between judge and jury as they see fit."

On the merits, the Court ruled that it was not unconstitutional if these confessions were used as the basis of conviction. While the Supreme Court is not completely bound by state court determinations of any issue essential to the assessment of a claim of federal right, it gives weight to the decision below and does not approach the record *de novo*, or with the latitude which some state appellate courts possess. The Fourteenth Amendment does not assure immunity from all judicial error. Justice Jackson declared: "It is only miscarriages of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated by it if they do, that cause us to intervene to review, in the name of the Federal Constitution, the weight of conflicting evidence to support a decision by a state court." In most cases the primary and final responsibility must rest with the state courts, who are closest to the scene of events.

Nevertheless, Justice Jackson considered the various issues of fact in the case. As for physical violence, he noted that positive police testimony, not inherently improbable, was unshaken on cross-examination. With regard to psychological coercion inherent in the questioning, the Justice asserted: "Interrogation is not inherently coercive, as is physical violence. Interrogation does have social value in solving crime, as physical force does not." The limits of interrogation depend upon all the circumstances in each case, and it was noted that these defendants were neither young, soft, ignorant, nor timid. Extensive questioning by relays of police was approved as a means of solving crimes. "Of course," said Justice Jackson, "these confessions were not voluntary in the sense that petitioners wanted to make them, or that they were completely spontaneous, like a confession to a priest, a lawyer, or a psychiatrist. But in this sense no criminal confession is voluntary." Finally, on the question of delay and illegal detention, it was held that while this was relevant to the issue of coercion, it had been presented to the jury. The Court ruled that the more rigid rule of exclusion which it has promulgated for federal courts in the exercise of its supervisory power should not be confused with the more limited requirements of the Fourteenth Amendment.

The Court also ruled that if the jury rejected the confessions, it could constitutionally base a conviction on other sufficient evidence. The trial court had refused an instruction that if the jury found the confessions were coerced it must acquit. The Supreme Court held that this was proper; the confessions were put to the jury only tentatively, subject to its judgment and with instructions to ignore them if coerced. The Fourteenth Amendment does not enact a rigid exclusionary rule of evidence.

There was a special problem in regard to Wissner, who had not confessed, but was implicated by the two who did. He complained of his inability to cross-examine the accusing witnesses, that is to say, the confessors, but the Court held that the Fourteenth Amendment does not include a right of confrontation. Basically, his objection was that as to him the introduction of these confessions was hearsay, but Justice Jackson declared flatly that "the hearsay-evidence rule, with all its subtleties, anomalies and ramifications, will not be read into the Fourteenth Amendment." He said that the procedure for Wissner was not unconstitutional merely because the Justices might be able to think of a better one. He would not discredit constitutional doctrine to enable the guilty to escape through "mere technical loopholes." These men had had fair trial and fair review. "The people of the State are also entitled to due process of law."

Justices Black, Frankfurter, and Douglas filed vigorous dissenting opinions. Justice Black declared that the Court was giving up several constitutional safeguards: freedom from "arbitrary seizure, secret confinement and police bludgeoning to make him [i.e., the accused] testify against himself in absence of relative, friend or counsel"; "the right of an accused to confront and cross-examine witnesses who swear he is guilty of crime"; freedom from being held incommunicado by the police. Justice Frankfurter pointed out that while he respected the substantial autonomy of the states, he did not construe this deference to require abdication by the Court of its obligation to decide in a particular case whether a confession was voluntary. Whether the confession was coerced does not depend, he maintained, upon the strength of the other evidence. He believed that these confessions were the product of coercive police pressure. He thought the Court went too far in holding that even if a constitutional right had been denied, the defendant must also prove that the rest of the evidence would not have been sufficient to authorize the jury to find guilt. This, he declared, is "a retrogressive step in the administration of criminal justice," for it "affords new inducement to police and prosecutors to employ the third degree." Justice Douglas declared that we are now entering nothing less than "a new regime of constitutional law."

Among the various issues considered by the Court in the several cases disposed of in *Brown* v. *Allen*,[100] a similar question about confessions was raised by defendant Brown, a Negro who had been convicted of rape and sentenced to death. In his case, timely objection had been made to the introduction of a confession, the jury was excused, and after a preliminary examination in which Brown and two policemen testified, the trial judge concluded that the confession was voluntary. While Brown did not take the stand at the trial, on cross-examination of the policemen the jury learned that Brown, an illiterate, was held for five days after arrest before being charged with a crime, that he was not given a preliminary hearing until eighteen days after arrest, that he had no counsel during the period of detention, and that the confession was taken before the preliminary hearing and appointment of counsel. There was no record of physical coercion or prolonged questioning. The Court held that the rule prevailing in the federal courts which forbids the admission of confessions obtained before prompt arraignment, even if voluntary, is not a constitutional requirement, but only a rule of evidence for the federal courts. Said Justice Reed: "Mere detention and police examination in private of one in official state custody do not render involuntary the statements or confessions made by the person so detained."

Fair Procedure. Smith pleaded "not guilty" to a murder charge on the advice of a lawyer who knew nothing about his case but who happened to be in the courtroom and was asked by the judge to help out in the arraignment. Under Pennsylvania law, by failing to plead "not guilty by reason of insanity," Smith lost his only chance of requiring that the question of insanity be tried by a jury at the outset. Some months later, state-appointed counsel changed the plea to "guilty" so that he would have more time to get out-of-state evidence at state expense to support a contention that Smith was insane. Smith had been committed previously to mental institutions. The Court held, by a 6–3 vote, that there was no denial of due process because the plea of guilty was allowed without a previous adjudication of the issue of insanity, since under the state law if evidence offered at the trial raises substantial doubts about the defendant's sanity, counsel is free to change the plea to "not guilty by reason of insanity."[101] Thus, there was ample opportunity to rectify any error the first lawyer may have made. Furthermore, the Court held that the Constitution does not impose upon the state the duty of appointing a psychiatrist to make a pre-trial examination of sanity. It is sufficient if the issue of sanity was heard by the trial court.

In *Brown* v. *Allen*,[102] the case of Daniels involved two Negro defendants who, after conviction, were granted sixty days by the trial judge in which to prepare and serve a statement of the case for appeal. Their counsel failed to serve this statement until sixty-one days had passed, whereupon the trial judge struck the appeal as out of time. This precluded an appeal as of right to the state's highest court. The Supreme Court held that the failure to make a timely appeal was like the failure to raise an objection to unconstitutional action before conviction. "We cannot say," Justice Reed declared, "that North Carolina's action in refusing review after failure to perfect the case on appeal violates the Federal Constitution. A period of limitation accords with our conception of proper procedure."

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[100] 344 U.S. 443 (1953).

[101] *U.S. ex rel. Smith* v. *Baldi*, 344 U.S. 561 (1953).

[102] 344 U.S. 443 (1953).

Double Jeopardy. It was established in the *Palko* case[103] that the Fifth Amendment prohibition of double jeopardy does not apply to the states. In *Brock* v. *North Carolina*[104] the question came up again. Brock and two accomplices were accused of assault with a deadly weapon. The accomplices were tried first and found guilty. Before judgments were entered, Brock was placed on trial. After three other witnesses had been offered by the prosecution, the state then put the accomplices on the stand. They refused to testify on the ground of self-incrimination, their counsel telling the court that if judgment on their convictions should be adverse, they would appeal to the state supreme court. The trial judge upheld their refusal to testify, whereupon the state told the court that the testimony of these two men was necessary for the case and moved for a mistrial. The court granted the motion on the ground that the ends of justice required their testimony. The state supreme court then affirmed the convictions of the accomplices, a second jury was impanelled for Brock, and over due process objections the accomplices testified and Brock was convicted. The state supreme court held that there was no double jeopardy because the trial court had the power to declare a mistrial in the interests of justice, in accordance with an old state common-law rule.

Six Justices held that the North Carolina procedure did not violate due process, leaning heavily on the *Palko* precedent. "This Court," said Justice Minton, "has long favored the rule of discretion in the trial judge to declare a mistrial and to require another panel to try the defendant if the ends of justice will be best served."[105] Depending upon the facts, justice for either party or both may indicate to a trial judge the wisdom of using his discretionary power of declaring a mistrial and ordering a new trial. No hard and fast due process rule is possible.

Chief Justice Vinson wrote a spirited dissenting opinion. "For the first time in the history of this Court," he asserted, "it is urged that a state could grant a mistrial in order that it might present a stronger case at some later trial and, in so doing, avoid a plea of former jeopardy in the second trial." What the Court's ruling means, he said, is that if the prosecutor thinks he cannot win a conviction from the jury on the testimony at the trial, he is free to stop the trial and insist that it be tried again when he has stronger testimony to offer. He asserted that, considering the needs of orderly justice, a defendant could not ask for a mistrial because the state had done well and the defense poorly. The same rule ought to apply to the prosecution. While he agreed that the technical aspects of the doctrine of double jeopardy do not fall within the scope of due process, the basic idea does, and he noted that all but five state constitutions as well as the federal Constitution have clauses forbidding double jeopardy. In the five states without such constitutional clauses there are common law rules against it. Thus North Carolina is out of step with the nation. He insisted that the general rule is that a second trial will be allowed "only for extreme circumstances, often contributed to by the defendant and beyond the control of the prosecutor, which prevented the testimony from being available at the first trial."

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[103] *Palko* v. *Connecticut,* 302 U.S. 319 (1937).

[104] 344 U.S. 424 (1953).

[105] Justice Minton cited *Wade* v. *Hunter,* 336 U.S. 684 (1949) and *Thompson* v. *United States,* 155 U.S. 271 (1894).

Wiretapping. Finally, in *Schwartz* v. *State of Texas*[106] the Court ruled that Section 605 of the Federal Communications Act, which forbids wiretapping,[107] does not exclude evidence secured through wiretapping from a state criminal proceeding. It has been held that this statute renders inadmissible in a federal court communications intercepted in this fashion,[108] even though they were intrastate telephone calls.[109] But it does not follow, Justice Minton ruled, that such evidence is inadmissible in a state court. This accords with the holding in *Wolf* v. *Colorado*[110] that evidence obtained by a state officer by means which would constitute an unlawful search and seizure under the Fourth Amendment is nonetheless admissible in a state court, even though the same evidence, if obtained by a federal officer, would be clearly inadmissible in a federal court.[111] This is also the uniform holding of state courts, and conforms with the pertinent Texas statute. The Court will not extend a federal statute by implication so as to invalidate the specific language of a state statute. "The exercise of federal supremacy is not lightly to be presumed." Nevertheless, Justice Minton pointed out that the fact that Texas legislated in this field is given due consideration, but is not controlling, and that the Court's decision would be the same if the Texas courts had pronounced this rule of evidence. Finally, since the holding was that Congress did not intend to impose a rule of evidence on the state courts, it was unnecessary to decide whether it has the power to do so. Justice Douglas dissented alone on the theory that wiretapping is a violation of the Fourth Amendment, and hence within the scope of the Texas statute which excludes evidence secured in violation of the federal Constitution. He argued that prior federal decisions which take a contrary view ought to be overruled.

2. EQUAL PROTECTION OF THE LAWS

Restrictive Covenants. In 1948 the Court held in the *Shelley* case[112] that racial restrictive covenants may not be enforced in equity by state courts against

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[106] 344 U.S. 199 (1952). See Comment, "Admissibility in a State Court of Evidence Obtained by Wire-Tapping," *Missouri Law Review*, Vol. 18, pp. 185–91 (April, 1953).

[107] " . . . No person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . . . "

[108] *Nardone* v. *United States*, 302 U.S. 379 (1937).

[109] *Weiss* v. *United States*, 308 U.S. 321 (1939).

[110] 338 U.S. 25 (1949).

[111] *Weeks* v. *United States*, 232 U.S. 383 (1914).

[112] *Shelley* v. *Kraemer*, 334 U.S. 1 (1948).

Negro purchasers, because that would be state action in violation of the equal protection guarantee of the Fourteenth Amendment. In *Barrows* v. *Jackson*[113] the Court went a step further to rule, by a 6–1 vote, that a state court may not, for the same reason, entertain a suit at law for damages for breach of a restrictive covenant brought by one "Caucasian" against another. Otherwise, said Justice Minton, the state would be encouraging the use of restrictive covenants. If a property owner may be sued for failure to carry out such a covenant, he is in effect coerced to continue to use his property in a discriminatory manner. Thus it becomes the state's choice that he observe the covenant or suffer damages. The result is that non-Caucasians are unable to buy, own, and enjoy property on the same terms as white people.

The technical question which Chief Justice Vinson stressed in his dissent related to the standing of the defendant, who was not a Negro, to raise the equal protection issue. The general rule is that a party cannot challenge the constitutionality of a statute unless he can show that he is within the class whose rights are being infringed.[114] But here, said Justice Minton, is "a unique situation in which it is the action of the state *court* which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court." Thus, under the peculiar circumstances of this case, and because of the close relationship between the restrictive covenant and the sanction of the state court, the usual rule on standing, which is only a rule of practice, must give way to the need to protect fundamental rights which would otherwise be denied. And the defendant asserts not the rights of non-Caucasians as a group, but those particular non-Caucasians who are would-be users of restricted land. The Chief Justice insisted that no Negro would be injured if the defendant were required to pay damages for breaching a promise voluntarily made, and that the decisive fact even on the merits was that no identifiable non-Caucasian was before the Court who had been denied any right. In his opinion the defendant was acting as the self-appointed agent of an "anonymous, amorphous class," and not in defense of his own rights.

School Segregation. After full argument of five cases in which the Court was asked to rule on the constitutionality of segregation in the public schools of four states and the District of Columbia, the Court on June 8, 1953, restored them to the docket and assigned them for reargument in the following term.[115] The cases, which aroused enormous public interest, were reargued December 7–9, 1953. The Court asked counsel to discuss the understanding of the framers and ratifiers of the Fourteenth Amendment in regard to public school segregation, and raised a number of questions about the sort of decree it should or could write.

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[113] 346 U.S. 249 (1953). The case came up from California, which had ruled that the suit was forbidden by the *Shelley* case. The Supreme Court of Michigan and the District Court of the District of Columbia had taken the same position. The Supreme Courts of Missouri and Oklahoma had ruled the other way.

[114] See Note, "'Standing' to Attack the Constitutionality of a Statute," *New York University Law Review*, Vol. 27, pp. 656–70 (Oct., 1952).

[115] *Brown* v. *Board of Education of Topeka*, 345 U.S. 972 (1953). See: John P. Frank, "Can Courts Erase the Color Line?," *Buffalo Law Review*, Vol. 2, pp. 28–44 (Winter, 1952); Will Maslow and Joseph B. Robison, "Civil Rights Legislation and the Fight for Equality, 1862–1952," *University of Chicago Law Review*, Vol. 20, pp. 363–413 (Spring, 1953); Wilfred C. Leland, Jr., "We Believe in Employment on Merit, But . . . ," *Minnesota Law Review*, Vol. 37, pp. 246–67 (March, 1953).

Jury Discrimination. In *Avery* v. *Georgia*[116] the Court unanimously held unconstitutional a jury selection system used in Fulton County, Georgia, in which the names of white persons selected for jury panels were printed on white tickets and the names of Negroes on yellow tickets. The Chief Justice said that obviously the use of white and yellow tickets makes it easier for those to discriminate who wish to do so. Justice Frankfurter remarked in a concurring opinion that these slips could serve no other purpose but discrimination. The practice in question was not authorized by Georgia statutes, and even the state supreme court declared that the use of separately colored tickets was "prima facie evidence of discrimination." Since no Negro was drawn to serve in a panel of sixty names in this case, a prima facie case of discrimination was established. It is not necessary, as the state court had ruled, for the appellant to prove some particular act of discrimination by a specific official. On the contrary, the state must dispel the prima facie case of discrimination with sufficient evidence. This Georgia failed to do.

In *Brown* v. *Allen*,[117] defendants Brown and Speller, who had been convicted in North Carolina courts, both raised questions of discrimination in the selection of juries. Brown's principal argument was that, in the proportional sense, fewer Negroes than whites served on the juries of Forsyth County. Jury names are taken from taxpayers' lists, and Negroes number about 16 per cent of the listed taxpayers. The local officials swore that the names of all taxpayers are put in the box, and that the selection is made in public by lot, with the drawings by a small child. Of the 37 persons summoned for the petit jury in Brown's case, eight were Negroes, and there were three Negroes in a special venire of twenty. Peremptory challenges or challenges for cause eliminated all the Negroes. Uncontradicted state evidence showed that in 1949 and 1950 from seven to ten per cent of the persons drawn for grand jury panels were Negroes, and that in 1950 from nine to seventeen per cent of those drawn for petit juries were Negroes. The Court held that to make a showing of violation of equal protection, there must be proof of discrimination on racial grounds. Variations in proportions of Negroes and whites on jury lists from the racial proportions of the population are not necessarily such proof. The taxpayer lists included all men who paid property or poll taxes, and *all* men between 21 and 50 are required to list both. While the Court recognized that taxpayer lists have a higher proportion of whites, due to inequality of educational and economic opportunities, it refused to invalidate this procedure. Justice Reed stated that it was not the Court's duty to impose on the state its conception of the proper source of jury lists, "so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence" for this civic duty. "Short of an annual census or required population registration, these tax lists offer the most comprehensive source of available names." Justice Black, dissenting, argued that in view of the fact that about one-third of the population of Forsyth County was Negro, the number of Negro jurors was glaringly disproportionate, and must have been due to design.

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[116] 345 U.S. 559 (1953).

[117] 344 U.S. 443 (1953).

As for Speller, the evidence established that no Negro had ever served on a jury in Vance County before his case. But North Carolina revised its jury law in 1947, and in the special venire there were 145 Negroes out of a total of 2,126 names. The Court ruled that the long history of discrimination against Negroes in the county was not decisive of discrimination in Speller's case, since "former errors cannot invalidate future trials." An additional point was that the clerk of the jury commissioners chose for the panel those on the tax lists who had "the most property," although he testified that racial discrimination did not enter into his selection. The Court held that this issue, not having been raised before, was not open for consideration. Finally it was noted that while 38 per cent of the people on the Vance County tax lists were Negroes, only 7 per cent in the jury box were Negroes. The Court ruled that this could be explained by the economic factor, that the lower courts had all agreed on the absence of racial discrimination, and that the small number of Negro names in the jury box was not in itself evidence of racial discrimination. Justice Black argued that with Negroes constituting 45 per cent of the county's population and 38 per cent of its taxpayers, the small number of Negroes in the jury box could be explained only on the ground of discrimination.

3. THE RIGHT TO VOTE

In 1944, in the last of a series of white primary cases, the Court held that even where Negroes were excluded by the rules of the Democratic party of Texas from voting in the party primaries, the right to vote guaranteed by the Fifteenth Amendment was denied, because the party activities were subject to so much state control that the party was in effect an agency of the state.[118] Since then, several variations on this theme have appeared in the federal courts. South Carolina's attempt to circumvent this rule by the expedient of repealing all statutes on the subject of political parties, thus hoping to convert them into mere private clubs, and as such outside the scope of the Amendment, was rebuffed.[119] Alabama tried its luck with its "Boswell Amendment," which denied registration to all who could not "understand and explain" any article of the Constitution, and this was nullified as conferring an arbitrary power on the board of registrars, since the standard was vague, uncertain, and indefinite.[120]

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[118] *Smith* v. *Allwright*, 321 U.S. 649 (1944).

[119] *Rice* v. *Elmore*, 165 F. 2d 387 (4th Cir. 1947), certiorari denied, 333 U.S. 875 (1948); *Baskin* v. *Brown*, 174 F. 2d 391 (4th Cir. 1949).

[120] *Davis* v. *Schnell*, 81 F. Supp. 872 (S. D. Ala. 1949), affirmed, *per curiam*, without opinion and without argument, 336 U.S. 933 (1949).

Another wrinkle appeared in *Terry* v. *Adams*.[121] Here a Texas county sought to disenfranchise Negroes through the expedient of a preprimary primary from which Negroes were barred. All white people on the official list of county voters were automatically members of the Jaybird Democratic Association. Claiming to be a self-governing voluntary club, it ran preprimary primaries, meeting expenses by assessing the candidates. Since 1889, every county-wide official elected to office had first won endorsement in the Jaybird primary. Usually the winners of the Jaybird primary are the only candidates in the Democratic primaries and general elections that follow.

With only Justice Minton dissenting, on the ground that no state action was involved, the Court held that the Jaybird contrivance violated the Constitution, but no single theory was agreed upon. In an opinion joined by Justices Douglas and Burton, Justice Black declared that the Fifteenth Amendment clearly extends to "any election in which public issues are decided or public officials selected," although he conceded that it does not apply to social or business clubs. He noted that the very same standards or qualifications prescribed by Texas for voters were adopted as the only qualifications for Jaybird primaries, except for the racial ban. "The Jaybird Party thus brings into being and holds precisely the kind of election that the Fifteenth Amendment seeks to prevent." Here the state violates the Amendment by permitting this circumvention that produces the equivalent of the prohibited election, the only election that matters in this county. The Jaybird primary has become, he declared, an integral part of the elective process, indeed, its only effective part.

In a separate concurring opinion Justice Frankfurter recognized that the difficulty in this case was whether there had been state action. He advanced the theory that assuming Jaybird not to be a party (a matter for Texas to decide) there was state action because the electoral officials of the county shared in the subversion of the Texas primaries law by participating in the scheme. Therefore, he argued, the remedy was not to require Negro participation but to bar the whole business directly. The weakness of this theory was the lack of any direct evidence that local election officials did have a hand in Jaybird's affairs. Furthermore, not everything done by a person who is an official is done officially.

Justice Clark filed an opinion in which the Chief Justice and Justices Reed and Jackson joined. He maintained that Jaybird was a political party falling within the ban of the Fifteenth Amendment because it operated "as part and parcel of the Democratic Party." Both have the same qualifications for membership; the preprimary in May of each election year is linked with the official Democratic primary in July; the Jaybird winner always wins in the Democratic primary. Since Jaybird is "the decisive power in the county's recognized electoral process," it nullifies the Negro's vote at the only stage in the local political process where it might matter. The political organization which controls the choice of public officials is an agency of government within the meaning of the constitution.

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[121] 345 U.S. 461 (1953). See Cortez A. M. Ewing, *Primary Elections in the South* (Norman, Oklahoma, 1953).

While this decision protects the Negro's right to vote and continues a series of decisions bearing upon this point, its chief impact upon the pattern of constitutional law may well be the expanded definition of state action. No single theory was agreed upon, but the holding that the Jaybird preprimary primary was state action does seem to enlarge the area in which federal review of local activity may be expected.

4. STATE POWER AND THE COMMERCE CLAUSE

Regulation. The question of the scope of state authority over interstate commerce still evokes sharp divisions of opinion. A state regulatory scheme was approved by the Court in *Lloyd A. Fry Roofing Company* v. *Wood,*[122] but only by a 5–4 vote. The Company manufactures asphalt roofing products in Memphis, Tennessee, and sends them in trucks to customers in nearby states. Some of these trucks, the Company alleges, are merely leased to it, and are driven by their owners. Five of these driver-owners, while carrying the Company's interstate shipments on Arkansas highways, were arrested for having failed to obtain permits as required of all contract-carriers by the Arkansas Motor Act. The State Supreme Court found that the truck drivers were not the Company's employees, that the lease arrangements were shams, and that the Company was therefore a shipper and not a carrier of any kind. It held that the driver-owners were in reality transporting the Company's goods as "contract carriers," for which a state permit was necessary.

Speaking for the majority, Justice Black made it clear that under the rule of *Buck* v. *Kuykendall,*[123] it would be a violation of the Commerce Clause for a state to deny interstate contract carriers permits because of the adequacy of other transportation services. But here Arkansas asks these driver-owners to do nothing except apply for permits as contract carriers. The state commission expressly disclaims any discretionary right to refuse to grant a permit. The state merely requires registration in the belief that identification is essential for the proper enforcement of the state's valid police, welfare, and safety regulations. There is no showing that the commission has attempted or will attempt to attach any burdensome conditions to the grant of a permit, in any manner conflicting with the federal Motor Carrier Act or any ICC regulation thereunder. Justice Black concluded that the mere requirement of such a permit does not impose an "undue burden" on interstate commerce. "At present we hold only that Arkansas is not powerless to require interstate motor carriers to identify themselves as users of that state's highways."

For the minority, Justice Douglas argued that it was immaterial whether these driver-owners were contract or private carriers, and that, in the light of the conditions that had to be met, what Arkansas in effect demanded was that they should secure state certificates of public convenience and necessity, and not mere permits. He agreed that states may regulate interstate commerce in the interest of safety, exact fees for highway maintenance, or require permits for intrastate business, but argued that the right to engage in interstate commerce cannot be made to depend upon state permission. Furthermore, he maintained that Congress had preempted the whole field.

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[122] 344 U.S. 157 (1952).

[123] 267 U.S. 307 (1925).

Taxation. There were two cases during the Term dealing with the impact of state taxation upon interstate commerce. In *Bode* v. *Barrett*[124] the question was whether interstate carriers also doing an intrastate business could be required to pay an Illinois tax for the use of the public highways measured entirely by the gross weight of the vehicle. Noting that each of the interstate carriers carried on an intrastate business as well, and that it is clearly within the police power of Illinois to exact a tax for the privilege of using state highways, the Court concluded that the protesting carriers failed to carry the burden of proving that the tax bore no reasonable relation to the use they made of the highways in their local operations. Due process issues, such as the objection that private carriers were taxed at the same rate as carriers for hire, were dismissed as "without substance" or "frivolous." Justice Frankfurter, who filed a dissenting opinion in which Justice Jackson concurred, construed the majority decision to be that where the two types of commerce are commingled, the plaintiff has no standing to sue. He protested that the Court had given consideration to about 100 state taxation or regulation cases in which interstate and intrastate commerce were commingled. "Can it be," he asked, "that all our predecessors bothered their heads needlessly?"

The other decision, *Chicago* v. *Willett Company*,[125] upheld a Chicago ordinance which levied a tax on trucks graduated according to size, as applied to an Illinois corporation with its place of business in Chicago which operated trucks transporting goods within the city, between the city and other points in Illinois, and between Chicago and points in neighboring states. It was stipulated that every day of the year the Company's trucks carry along with property which never leaves the city property destined for some point outside the state. The Supreme Court held that the case was within the "home port" theory of the *Northwest Airlines* decision.[126] The state supreme court had ruled that the ordinance did not impose a tax on trucks which do not carry goods within the city. Justice Frankfurter declared that the Company had made no attempt to show that the tax in fact burdened interstate commerce, though this is for the taxpayer to show affirmatively. The "home port" theory, he said, "fits a fleet of trucks at least as well as it does a fleet of airliners." The "central and decisive fact" is that the Company's business has a home in Chicago, and that its business revolves around the city, from which it continuously receives protection and the benefit of public services. Therefore a tax "of reasonable proportions" not shown in fact to be a burden on interstate commerce is valid. The novelty of this analysis is that the "home port" doctrine, heretofore applied only in connection with property taxes, is now extended to franchise taxes.

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[124] 344 U.S. 583 (1953). See Note, "State Taxation of Vehicles Moving Interstate," *Indiana Law Journal*, Vol. 28, pp. 212–30 (Winter, 1953).

[125] 344 U.S. 574 (1953).

[126] *Northwest Airlines, Inc.* v. *Minnesota*, 322 U.S. 292 (1944). Also relied upon was *People ex rel. N.Y. Central & H.R.R. Co.* v. *Miller*, 202 U.S. 584 (1906).

Justices Reed and Vinson, concurring separately, argued that the tax in question was strictly an occupational tax for carrying goods within the city. They disagreed with the majority's holding that the tax is valid merely because the taxpayer is an Illinois corporation with its business home in Chicago. "The corporation is taxable," they said, "because it does intrastate business on the streets of Chicago." For obviously, they insisted, the charge is for the use of the highways of Chicago. Dissenting alone, Justice Douglas maintained that since this was an occupation tax, it cannot be exacted for the privilege of engaging in interstate commerce. Since there was a flat fee per truck, and the Company cannot segregate its interstate business, he reasoned that by increasing the number of trucks in operation the interstate business increased the amount of the tax.

5. INTERGOVERNMENTAL RELATIONS

Intergovernmental Taxation. There were three cases during the Term testing the validity of state taxes which impinged in some fashion upon federal instrumentalities. During World War II, there being a shortage of storage facilities, the government contracted with Esso Standard Oil for the storage of government-owned fuel, the company receiving a service charge, and the United States agreeing to assume liability of all state taxes. The Court held that under these circumstances Tennessee could collect from Esso a six-cent tax on the privilege of storing gasoline.[127] Justice Reed ruled that this tax was imposed because Esso exercised the privilege of storing gasoline, and was not "on" the government property.[128] The fact that a financial burden upon the United States may result has not been regarded as a fatal flaw since the *Dravo* case.[129] Corporations and individuals contracting with the United States do not share in the sovereign's exemption from state taxation merely because their activities are useful to the government. Three members of the Court dissented without opinion.

Another claim of immunity from local taxation was rejected in *Howard* v. *Commissioners of Louisville.*[130] In 1940 the United States acquired by condemnation, with the consent of the Kentucky legislature, the land on which a naval ordnance plant was located. By ordinances adopted in 1947 and 1950 the City of Louisville annexed the plant tract, and this was not challenged by the United States. The Court held that it was permissible for the City to collect from the employees of the plant a license tax for the privilege of working in the city, measured by one per cent of all salaries or wages earned therein. Justice Minton reasoned that the land in question did not cease to be a part of Kentucky, and that "a change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property." The Court also ruled that the Buck Act granted the right to tax income paid to employees of the government working in the plant. This statute defined an "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." It is true that the Kentucky Court of Appeals had previously ruled that the sort of license tax at issue here was not under Kentucky law an income tax. But the right to tax in this area, it was pointed out, was not given in accordance with the view of Kentucky law as to what is an income tax, but rather within the definition of the federal statute. Justices Douglas and Black, who dissented, thought this was not an income tax within the meaning of the Buck Act, but was by its terms a "license fee" levied on the "privilege" of engaging in certain activities. They asserted that "the Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States."

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[127] *Esso Standard Oil* v. *Evans,* 345 U.S. 495 (1953).

[128] *United States* v. *Allegheny County,* 322 U.S. 174 (1944) was distinguished on the ground that there the state applied an ad valorem property tax to government-owned machinery leased to a private company; thus the value of the federal property was in part the measure of the tax.

[129] *James* v. *Dravo Contracting Co.*, 302 U.S. 134 (1937).

[130] 344 U.S. 624 (1953).

The taxpayer did win, however, in *Dameron* v. *Brodhead*.[131] Dameron, an officer in the U.S. Air Force, and a citizen and resident of Louisiana, was assigned to Lowry Field in 1948, and resided throughout the year in a rented apartment in Denver. The Court ruled that the application of a local personal property tax to his household goods was barred by Section 514 of the Soldiers' and Sailors' Relief Act of 1942. This section provides that so far as local taxation is concerned "such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders. . . ." A 1944 amendment provides that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State . . . " In the light of the grant to Congress of the war power and the power to maintain armies, the Court had no doubt about the constitutionality of a statute exempting servicemen from substantial burdens of local taxation. It was regarded as immaterial that Dameron was not a business contractor, for he was none the less engaged in a function of the federal government. Justices Douglas and Black disagreed, arguing from the premise that "the power to tax is basic to the sovereignty of the states." Justice Douglas seems to have some special fondness for the term "state sovereignty." He maintained that while the power of Congress to withhold tax immunity is clear, its power to create tax immunities has been narrowly confined, and he declared: "Up to the present the Court has never held that the *private* affairs of a federal employee can be made *public* affairs by Congress and immune from state taxation." He thought that in his private capacity a federal employee is no different from any other citizen. He enjoys the benefits of local government and ought to be required to pay his share. He could not see how Denver's tax burdens the performance of any federal function.

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[131] 345 U.S. 322 (1953).

Priority of Tax Liens. Both the federal government and the Town of Walpole, New Hampshire, had claims, arising from tax liens, to a fund in the hands of a state court receiver of the assets of a corporation that was declared insolvent in 1949. The Town's lien grew out of an assessment of an ad valorem tax on machinery for 1947 and 1948. The federal lien was for employment, withholding, and income taxes that became due between 1943 and 1948. Under Section 3672 of the Internal Revenue Code, a federal lien is not valid as against a "judgment creditor" until notice thereof has been filed by the collector in the office of the federal district court. The New Hampshire court ruled that under state law an ad valorem tax assessment is in the nature of a judgment, and that therefore the Town was a judgment creditor within the meaning of the federal law. Since the federal notice of lien was not filed until after the Town's taxes were assessed, the state court held that the federal lien was not valid as against the Town's. The Supreme Court reversed, holding that while the state is free to interpret the nature of its own tax proceedings as it wishes, the meaning of a federal statute is for it to decide.[132] Justice Minton reasoned that a cardinal purpose of Congress in its tax legislation is uniformity, and therefore the term "judgment creditor" should have the same meaning in all the states. He thought Congress intended to use the term "in the usual, conventional sense of a judgment of a court of record, since all states have such courts." He did not believe Congress had in mind the action of taxing authorities who may act judicially, as in New Hampshire and some other states. Justices Frankfurter and Reed dissented, contending that the statute does not require that the same procedure be followed in every state, and that it refers to state law.

Full Faith and Credit. The Justices were sharply divided over the full faith and credit problem presented in *May* v. *Anderson*.[133] The issue was whether in a habeas corpus proceeding attacking the right of a mother to retain possession of her minor children, an Ohio court must give full faith and credit to a Wisconsin decree awarding custody of the children to their father, when that decree was obtained by the father in an *ex parte* divorce action in a Wisconsin court which had no personal jurisdiction over the mother. Five Justices gave a negative answer to this question. The facts were as follows: The parties were married in Wisconsin and lived there until marital troubles developed in 1947. It was agreed that the mother, Leona May, should take the children to Lisbon, Ohio, to think things over. She then decided not to return to Wisconsin and so informed her husband Anderson, who then filed suit in Wisconsin, asking for an absolute divorce and custody of the children. The only service of process on May was delivery to her personally in Ohio of a copy of the Wisconsin summons and petition, in conformity with the Wisconsin statutes. May entered no appearance and took no part in the Wisconsin proceeding. This proceeding produced not only a divorce decree, but also an award of custody of the children to the father. Armed with a copy of this decree, Anderson demanded and obtained the children from the mother in Ohio and brought them back to Wisconsin. In July, 1951, Anderson took the children to Lisbon to visit their mother, and this time she refused to surrender them. Anderson thereupon filed a petition for habeas corpus in an Ohio court, which took the position that it was obliged by the Full Faith and Credit Clause to accept the Wisconsin decree as binding upon the mother.

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[132] *United States* v. *Gilbert Associates*, 345 U.S. 361 (1953).

[133] 345 U.S. 528 (1953).

Justice Burton ruled that it was well settled that the Full Faith and Credit Clause and the act of Congress on the subject do not entitle a judgment *in personam* to extraterritorial effect if it is made to appear that it was rendered without jurisdiction over the person sought to be bound. He said that it was unnecessary to determine the legal domicile of the children at the time of the custody decree, because even if it was with the father, that did not give Wisconsin, as against Ohio, the personal jurisdiction that it must have in order to deprive the mother of her personal right to their immediate possession. In other words, where the defendant in a divorce action is a nonresident and does not appear, and process is had only by substituted service, the court determines only the status of the parties, and not other questions. A mother's right to custody of her children is a personal right entitled to at least as much protection as her right to alimony.

Justice Frankfurter filed a concurring opinion to explain that all the Court is deciding is that the Full Faith and Credit Clause does not require Ohio, in disposing of the custody of the children in Ohio, to accept, under these circumstances, the disposition made by Wisconsin. But it is not decided that Ohio would be precluded from recognizing, as a matter of local law, the disposition made by the Wisconsin court. Nor would it offend due process for Ohio to do so. He said that the decision in this case is based on the fact that the child's welfare in a custody case has such a claim upon the state that its responsibility is obviously not to be foreclosed by a prior adjudication reflecting another state's discharge of its responsibility at another time.

Justice Minton dissented briefly to make the point that since the Wisconsin decree had been unappealed, and was valid on its face, and the mother had failed to challenge it by any pleading, the decree is entitled to full faith and credit in Ohio. Justice Jackson dissented at great length in an opinion in which Justice Reed joined. He insisted that if Wisconsin has rendered a valid judgment the Constitution requires every state to give it full faith and credit. He lamented that in recent years the Court has been "chipping away" at the concept of domicile. He agreed that we are a mobile people, "but if our federal system is to maintain separate legal communities, as the Full Faith and Credit Clause evidently contemplates, there must be some test for determining to which of these a person belongs," and no better test is available than that of domicile. He asserted that the decision of the Court comes to this, that the Wisconsin courts cannot bind the mother, and the Ohio courts cannot bind the father. Under these circumstances, possession becomes the whole of the law, and self-help the ultimate authority. He agreed that the Wisconsin courts never obtained jurisdiction over the person of the wife, who decamped, but there was jurisdiction based on the domicile of the husband and the children.

He believed the jurisdictional requirements for both divorce and custody were similar. He thought the Court was equating the jurisdictional requirements for a custody decree with those for an *in personam* money judgment, without assigning reasons, except for the remark that the wife's rights here were far more precious than property. "The force of this cardiac consideration is self-evident," he remarked, "but it seems to me to reflect a misapprehension as to the nature of a custody proceeding. . . ."

The Court was also divided 5–3 in *Wells* v. *Simonds Abrasive Company*,[134] in which an action for a wrongful death which had occurred in Alabama was brought in a federal district court in Pennsylvania more than one year but less than two years after the accident happened. The suit was based on a section of the Alabama code which provided that a suit for wrongful death must be brought within two years after the death. The trial court ordered summary judgment for the defendant, taking the position that the Pennsylvania statute, with a one-year limitation, was controlling, because the Pennsylvania conflict of laws rule called for the application of its own statute of limitations rather than that of the place of the accident. The Supreme Court affirmed, holding that the Pennsylvania conflicts rule did not violate the Full Faith and Credit Clause. This Clause, said the Chief Justice, does not compel the forum state to adopt any particular set of rules on the subject of conflict of laws. The rule that the limitations of the forum state apply is the usual conflicts rule of the states. It is true that some states have taken the position that where a foreign statutory right unknown to the common law has a period of limitation in the section creating the right, the limitation is regarded as so intimately connected with the right that it must be enforced in the forum state along with the substantive right. But this is not required of the states by the Full Faith and Credit Clause. Justice Jackson wrote the dissenting opinion, arguing that the remedy is inseparable from the right. He feared that the Court's decision would open the door to shopping for a favorable forum, since under it a party who may get a change of venue may also get a change of law as a bonus. In his view, the plaintiff should take her Alabama rights with her wherever she elects to sue.

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[134] 345 U.S. 514 (1953).

THE PRESIDENT'S ECONOMIC STAFF DURING THE TRUMAN ADMINISTRATION

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When the Council of Economic Advisers opened its doors in late 1946, many regarded the fledgling agency as a contingent of depression doctors armed with a "watered down" version of the Full Employment Bill. Instead, during the Truman era, the Council became, in the words of its second chairman, "an over-all general economic advisory staff"[1] generally concerned with major problems affecting the growth and stability of the American economy, including its adaptability to the special demands of international stress. Actually the "transition" of the agency to this broader role was more apparent than real, since the Employment Act itself clearly contained a charter for a general economic staff function if the new staff and its principal chose development in that direction. In the wartime deliberations which led up to the Act, the Congress was concerned not only to prevent a postwar depression but also to improve the integration of the whole economic policy formation process.[2] And, in the final version of the Act, after making a very general policy declaration,[3] the Congress decided, instead of drafting specific substantive solutions which would prejudge the source and nature of future economic problems, to establish procedural machinery to facilitate the intelligent diagnosis and solution of such problems when they did subsequently arise.[4]

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[1] Testimony of Leon H. Keyserling in the Senate Appropriations Subcommittee *Hearings on the Independent Offices Appropriation Bill for 1952,* 82nd Cong., 1st sess., p. 90.

[2] The immediate legislative ancestors of the Employment Act included a number of statutes (the most important of which was the one setting up the Office of War Mobilization and Reconversion) dealing with the problem of coordinating the diverse economic activities of the federal government. This concern persisted during the consideration of the Employment Act and helps to account for the use of the term "coordinate" in the Act's declaration of policy. In earlier versions of the Bill, moreover, specific mention was made of the objective of preventing inflation as well as depressions. While in the final version specific mention of the anti-inflation objective was eliminated, the language of the statute still assigns to the Council the responsibility of recommending policies "to avoid economic fluctuations or to diminish the effects thereof. . . ."

[3] *Public Law 304,* 79th Cong., Sec. 2: "The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power."

The Council of Economic Advisers was part of that machinery. In assisting and advising the President in the preparation of his Economic Reports to Congress, and in otherwise advising him, the Council was not only to gather "timely and authoritative information" on current economic trends and analyze "foreseeable" developments; it was also to project target levels of national employment, production, and purchasing power. It was to review the current programs of the federal government and to make specific policy recommendations for administrative and legislative action.[5] Thus the new staff's general mission was spelled out. But, except for the very broad stipulation that it relate to the economy's general levels of production, employment, and purchasing power, its subject-matter scope was left flexible.

In the later years of the Truman Administration the extent of that flexibility was increasingly evident. In the first months after the Korean outbreak, the Council performed an expanding role in the defense program, participating in an advisory capacity in the work of the National Security Council,[6] taking a considerable hand in the initial formulation of mobilization—and particularly stabilization—policies, and maintaining a close working contact with the Defense Production Act agencies[7] during the earlier stages of their work. It is noteworthy that this considerable subject-matter shift was accomplished without any sudden dislocation of the agency's work programs or any "defense expansion" of its staff. By the end, roughly, of the first year after Korea the partial mobilization program was thoroughly institutionalized, and the Council's participation in and influence upon it had declined. By the end of another year it was devoting the bulk of its energies to looking beyond the build-up phase of the program toward the period of economic readjustment which would follow. In its July, 1952 and January, 1953 Economic Reviews it was, as it should have been, the first government agency to give sustained public attention to these "transition" problems.

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[4] For emphasis on the policy-coordinating purpose of the Employment Act machinery and on the primarily procedural character of the Act's prescriptions, see President Truman's final Economic Report (Jan., 1953).

[5] Secs. 3(a) and 4(c) of the Act.

[6] This work had been started, at the President's direction, in April, 1950 shortly before the start of the Korean action.

[7] In its extensive work with the defense agencies, both at Council and staff levels, the Council followed the directive of Sec. 803 of Executive Order 10161 (Sept. 9, 1950) implementing the Defense Production Act of 1950: "The Council of Economic Advisers shall adapt its continuing studies of employment, production and purchasing power needs and objectives so as to furnish guides to the agencies under this Executive Order in promoting balance between defense and civilian needs and in avoiding inflation in a stable and growing economy. In the performance of this function, the Council shall obtain necessary information from the agencies concerned and engage in regular consultation with them."

In the Senate Appropriation hearings for the fiscal year 1952, Mr. Keyserling illustrated the Council's relations with the defense agencies this way:

"First, take Mr. Wilson's organization. Very shortly after he came down I had a talk with him. It was manifest that, with the wide range of responsibilities that he has got, he would need economic servicing. I said to him, 'What is the need of you having an economic staff when you work for the President and the Council is a general economic staff servicing the President? Can't we help you?'

"And he said 'Yes.' Two things followed from that. I was put on his executive committee where he meets with his top executive mobilization officials, and time and again he has turned to us for the performance of general economic functions in connection with his work." *Hearings* (cited in note 1), pp. 90–91. The reference is to Mr. C. E. Wilson, Defense Mobilizer from December, 1950 to April, 1951.

The end of the Truman phase of the Council's life is a good time for a fresh look at the Council in political-administrative terms. While the present pages suffer from the nearsightedness of an inside vantage point, it is hoped that they may at least contribute raw material for the reappraisal which is needed.

I. THE SCOPE AND CHARACTER OF THE ECONOMIC STAFF FUNCTION

The President, the Council, and the Profession. The Council of Economic Advisers was explicitly constituted as a staff arm to the President. There is no basis for confusion about its reporting responsibility or for the lingering impression that it was supposed somehow to stand "half way between" the President and the Congress.[8] The persistence of the idea that the Council should be an "economic Supreme Court" for the most part reflects concern over possible conflict between the Council's reporting or staff responsibilities and its responsibilities to its own professional standards of economic analysis. In a sense there is nothing new about this problem of professional integrity. Any professional person in any kind of salaried employment faces it to some degree. However, there are factors which have legitimately highlighted the issue in the case of the Council. The Employment Act marked the first instance where a particular species of knowledge and ability had been given separate agency status within the President's staff.[9] And more important, economics is a profession in which the boundaries of expertise are not, and probably never will be, clearly drawn. The argument that the Council is likely to soil "economic science" with "politics" often is simply a rationalization for those who dislike the policies of the Administration of which the Council is a part. But the professional integrity question has been seriously raised also by members of the economics profession, and it obviously was in the minds of some members of Congress when a three-man Council was established rather than a single-headed agency. There must, therefore, be a relatively congenial marriage between the Council's professional responsibilities and its reporting—or, as the idea sometimes gets translated, its political—responsibilities to the President, if the agency is to perform a coherent staff function.

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[8] The legislative committees which framed the Act specifically rejected proposals for a joint legislative-executive commission and for something on the model of the independent regulatory commission, reasoning that the new Act should make the constitutional division of powers work more smoothly, not blur it. It should be noted, however, that, as discussed below, there *are* important questions concerning the relations of the Council *as* a staff arm of the President with Congress.

[9] Contrary to the impressions of some, the statute itself does not require that members of the Council be professional economists in the strict sense of the term. The qualifications are that "as a result of . . . training, experience, and attainments," they be "exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the government . . . and to formulate and recommend national economic policy. . . ."

The Council can never afford to lose sight of its responsibility—not only to professional standards *but also to the President*—for competence and integrity in its collection, organization, and interpretation of factual data. There is little use in a staff assistant who tries to make the facts tell the story that he thinks the boss wants to hear. The Council's legislatively prescribed duties, however, carry it beyond the limits of "economic science." Besides doing factual analysis, it must also appraise the desirability of current public programs and recommend new ones, and here "science" must be coupled with normative judgments. If the policy advice which the Council turns out is to constitute useful presidential staff work, the weights which it places on various values obviously must be in general accord with those assigned by the Administration of which it is a part.

Furthermore, even within a given framework of values and objectives, scientific analysis seldom narrows alternative policy courses down to as specific a content as that which the Council often must give to its advice. From a professional viewpoint, then, there is almost always plenty of room for small differences over policy decisions. In the case of wide and important differences stemming from fundamental disagreements over values, or from what the Council sees as outright presidential refusal to accept its basic economic analysis, it seems to us that the course for a staff officer is perfectly clear. His services are no longer useful and his position is untenable. He should resign.

The antiseptic view of the Council which would have it stand wholly aloof from "political" questions overlooks the Council's legal responsibility for policy recommendations, which are inevitably tied up with social values and current strategies. It also ignores the basic duty of any presidential adviser not to let himself get completely confined to the half-world of his specialty. The latter point is amplified in the discussion below.

The Council's Specialization within the Executive Office. Under President Truman's executive organization, the Council had to be careful, as a small agency,[10] to avoid spreading itself too thin. Its size and the level of its position within the executive hierarchy required an effort to sort out the more general or strategic problems from the array into which it might dip. Moreover, limits to its scope of attention were needed to avoid excessive overlap with the other presidential advisers. But such limits could not be allowed to interfere with the Council's readiness as a professional staff to service the President in any respect he felt appropriate. And they could not interfere with the basic respon-

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[10] The Employment Act provides a $345,000 annual appropriations ceiling for Council personnel, including the three Council members. Appropriations, moreover, never have reached this ceiling and on several occasions have fallen substantially short of it.

sibility of any policy-concerned segment of the President's office for bringing to all of its work some measure of presidential thinking. In the following paragraphs is set forth our understanding of the Council's scope of attention as it became more or less established within the agency before the end of the Truman regime. It should be emphasized that this is a highly interpretative statement, that in attempting precision it risks becoming too exact, and that it is no more than a personal evaluation.

It is useful to distinguish between the work the agency did on assignment and what it undertook on its own initiative. On the assignment side, the rule was simple. The Council of Economic Advisers served as the President's personal economic consultant. In this capacity, the scope of the Council's interest was whatever projects the President might assign to it because he felt pending decisions would be benefited by professional economic analysis or opinion.[11] Similarly, the Council accepted work which, at the President's request or with his consent, other officials of the government referred to his economic staff.[12]

The rule on the scope of the Council's initiative cannot be meaningfully stated simply in terms of the *label* "economic," but it can be cast in terms of specific policy *objectives*. In participating in the policy formation process at the presidential level, the Council took the initiative in advancing, and recognized its responsibility for helping to specify and reformulate, two objectives—those of overall economic stability and of overall economic growth.[13] In the case of other objectives, it accepted the formulations made by those in the Administration primarily concerned with them.

The agency was, of course, vitally concerned with these other objectives and with the programs undertaken in their support insofar as they affected the even expansion of the economy. Among other objectives commonly called "economic," for example, those having to do with income distribution and with the maintenance of our institutional framework have an intimate bearing on growth and stability prospects. This is equally true of many "non-economic" objectives. Under the post-Korean defense program, for instance, a rapid expansion of industrial capacity has supported the need for, and eased the burden of, defense production. On the other hand, our needs for rearming had to be reconciled with the necessity of maintaining reasonable economic stability.

Thus the Council felt that it could not, without some inspection, disregard any of the panorama of policy programs spread out at the presidential level. But insofar as it itself acted as a party-in-interest in the policy formation process, it did so in behalf of the growth and stability objectives.

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[11] Under this heading, for example, would fall the technical work for the National Security Council noted above.

[12] For instance, at the request of the State Department or ECA, it frequently assisted in the preparation of U.S. presentations to the UN, NATO, and OEEC and, during the post-Korean period, it undertook various assignments for ODM and ESA. Cf. note 8, above.

[13] The concern of the Council with optimum economic growth as well as with stability appeared first in the discussion of "long-range program" in the President's first Annual Economic Report (pp. 34 ff.) and in the Council's December, 1947 Annual Report, which focused on the Employment Act's "maximum production" objective. The need for rapid and sustained growth became a dominant theme in the December and January reports bracketing the beginning of 1949, and was consistently emphasized thereafter.

In application, this ground rule with respect to initiative was subject to three significant qualifications, all of which derived from the Council's organizational position within the executive branch. In the first place, the agency of necessity usually had to confine itself to the higher-level and more general decisions, whether these involved pending and possible legislative determinations, or, as was the case to a great extent under the Defense Production Act, major policy problems which arose within the administrative authority of the President.

In the second place, the Council was quicker to concern itself actively with problems bearing upon the stability and growth objectives when they cut across the lines of established executive branch organization.

In the third place, in practicing its policy on initiative, the Council tried more or less consciously to avoid the danger of overly narrow professional specialization within the Executive Office. Some—particularly certain political scientists—have felt that the Council brings undiluted professional economics altogether too close to the President. There is no assurance, they say, that the preoccupations of his economic advisers will adequately reflect the political, diplomatic, and social objectives of the Administration. One answer to this anxiety is that the "narrowness" of economics varies with the economist. Another is that this objection to the Council scarcely gives due recognition to the present intricacy of the economy or to the pervasiveness of the government's economic role. A third answer is that the argument implies too simple and limited a concept of the presidency; it does not give sufficient weight to the variety of specialists and specialized agencies which compose the remainder of the Executive Office.

None of these answers, however, turns aside the substance of the point, which is the basic responsibility of any presidential staff unit—whatever its principle of specialization—for doing what we have called "presidential thinking." Its recommendations to the President must take more account of objectives and values outside its immediate focus of specialized interest than would be appropriate in recommendations originating in the regular operating agencies. All of the work of synthesizing competing and conflicting objectives cannot be loaded onto the White House itself. Subject to White House review, the other Executive Office agencies, including the Council, must share some of this responsibility. In particular, each of the latter needs to strive for the greatest possible teamwork within the Executive Office itself.

In general during the Truman years there was a substantial "interpenetration" among the institutionalized Executive Office agencies—the Budget Bureau, NSC, NSRB, the Council, and, after Korea, ODM. At both agency-head and staff levels there was extensive formal and informal interchange. The arrangement was not ideal; the need for enriching interagency relationships sometimes was obvious; and the desirability of structural reorganization was a subject of recurring speculation. Without intending to dispute the possibility of structural improvement, we would, first, suggest that coordinating the Executive Office coordinators will continue to be a problem more of esprit de corps and intangibles than of mechanical reforms, and, second, venture to say a kind word for the much-maligned "overlap" of the Executive Office agencies during the Truman period. The overlap among the Council, economic staffs in the Bureau of the Budget, and NSRB was much less extensive than is often supposed, and, in the degree to which it existed, often made for a more balanced net appraisal of a problem than if it had been analyzed exclusively within a budgetary, national security, or economic perspective.

II. THE COUNCIL'S OPERATIONS

Advising the President. The Economic Reports of the President, for which, under the Truman Administration, the Council of Economic Advisers supplied the working drafts, and the Council's own accompanying "Economic Reviews"[14] have constituted, semi-annually,[15] the evidence of the agency's work with which the public is most familiar. Also, the Council each month prepared "Economic Indicators,"[16] a convenient summary, in graphic and tabular form, of the more pertinent statistical series on the behavior of the economy as a whole; made quarterly reports to the President containing both factual and policy sections; and (after Korea) submitted a brief factual "Weekly Summary of Economic Developments."

In addition, the agency prepared a number of special memoranda for the President, both at his request and on its own initiative; frequently participated in the drafting of the President's legislative proposals; often prepared supplementary and supporting economic material for the information of Congress as it considered such proposals; and regularly, through the medium of the Legislative Reference Division of the Budget Bureau, reviewed enrolled bills awaiting action by the President, agency reports on bills pending before Congress, and proposed executive orders.

Theoretically a staff involved in its principal's decision-making may, as it were, occupy an anteroom to his office which provides the only means of access to him for business of a particular kind. Such a staff not only communicates *with* the principal, but *for*, and often *in lieu of*, him. Conversely, a policy-advising staff can be sequestered in a cul-de-sac, having direct communication only with the principal, and never, in his behalf, with outsiders. Like most staffs, the Council stood between these two conceptual extremes. At the outset, however, its role as a *thinking center* was the one which was more glamorized. Under the Employment Act, it was not to administer any legislative programs, and it never has. Rather, a few people were to be relieved from program operations so that, from the vantage of a central perspective, they might consider how all parts of the government's economic program fitted together.

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[14] The decision to shorten the President's report and to support it with an extensive analysis and interpretation presented under the Council's own label was made at midyear, 1948.

[15] Midyear Reports similar in form and content to the Annual Reports required by law were issued on the President's initiative from 1947 through 1952.

[16] Published by the Joint Committee on the Economic Report.

But during the Truman years the Council did not become an ivory-tower operation, nor was it ever intended by the Employment Act that it should be withdrawn from the arena of current issues. The Council was required to gather data and ideas from other government agencies instead of undertaking extensive statistical fact-gathering or primary research of its own.[17] Moreover, Congress in effect strongly advised that the agency make itself a channel through which important private economic groups could express their views on national economic policy questions.[18] Quite as important as the notion of the Council as a thinking center, therefore, has been its role as a presidential *communications center* both within the government and between the government and the private economy.

Interchange with Other Federal Agencies. In its contact with other federal agencies, the Council always has been concerned initially with getting a systematic picture and an integrated interpretation of current economic facts. In this effort it helped during the Truman Administration to develop considerable agreement throughout the executive branch as to what the current situation in fact was, thus reducing the differences over policy which subsequently arose. The practice of preparing the Annual and Midyear Economic Reviews through a process of interagency cross-clearance in advance of presidential decisions on policy recommendations proved particularly useful in this regard.

In seeking agreement about what the facts were, the Council shared the related responsibility of evaluating the government's fact-gathering and -processing resources. If federal programs are to grow out of meaningful factual research and analysis, it is essential that statistical agencies select and process data which policy-makers need and which can be joined together. In its first years the Council, working closely with the Budget Bureau's Statistical Standards Division,[19] contributed to, or helped to stimulate, several significant improvements in federal statistics.[20]

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[17] Sec. 4(d)(2).

[18] See Sec. 4(d)(1) of the Employment Act, dealing with advisory committees.

[19] Now the Office of Statistical Standards.

[20] The Council was partly instrumental in the development of data showing total physical production and the publication of a "deflated gross national product" series by the Department of Commerce; early release of quarterly national income estimates; development of the "cash balance" form of federal budget presentation; presentation of more meaningful data on changes in income distribution than was previously easily available; use of "input-output" analysis for testing the feasibility and implications of various programs; and the continuing improvement of the "Nation's Economic Budget." The last provides a consolidated national account summarizing receipts and expenditures of "Consumers," "Business," "Government," and of U. S. nationals in international transactions. For a full discussion of this approach see Gerhard Colm, "Experiences in the Use of Social Accounting in the United States," *Income and Wealth, Series I*, Appendix by Mary Smelker (Cambridge, 1951), pp. 75–111. Moreover, the appendixes of the semiannual Reviews have presented a relatively concise, yet detailed, overall statistical picture.

The core of the Council's operation under President Truman was its participation in executive policy coordination. The agency's role in this connection, effectuated by its closeness to the President, was partly informal and catalytic. Through daily, often unofficial, and usually oral contact with other agencies, members and staff were kept alerted not only to policy views firmly adopted by the heads of the operating agencies but also to many nascent in their lower echelons. Thus the Council frequently could anticipate interagency disagreements and either suggest compromises or be prepared to take sides.

No formal procedure for policy integration would accomplish much if it were not quickened by such a continuing flow of informal communications. But conversely, this informal interchange would have had little impetus or sense of direction if the Council had not been an integral part of the policy coordination machinery set up by the Employment Act. There is no more erroneous interpretation of the functioning of that machinery during the Truman Administration than the assumption that its principal moving part, the President's Economic Report, *started* in the Council, where the first draft was prepared, and, after some editing and revision in the White House, was dispatched forthwith to Congress. It would be as unrealistic to assume that a professional stage production starts with the dress rehearsal. Actually the published Reports, and the Council's Reviews which backed them up, were, in large measure, the end-products of an elaborate and laborious synthesizing process which embraced policy thinking throughout the executive branch.

The theory—and, increasingly, the practice—during the Truman Administration was that the procedure of presidential economic policy formulation carried on through the medium of the Council should parallel the process of budget preparation which is conducted through the medium of the Budget Bureau. The first drafts of the Economic Reports' policy sections, while done within the Council, were written out of close familiarity with the views of other agencies. The latter were made explicit in the replies of agency heads to calls from the President for recommendations concerning his forthcoming Economic Reports and the State of the Union Messages.[21] Each full round of report drafts was circulated for the comments of other agencies, and the yields usually were heavy. Disagreements emerged. Some of these were threshed out in staff committee meetings with representatives of the agencies. Others were taken up by the Council members in direct negotiation with agency heads; some were carried into the Cabinet meeting devoted to each Report shortly before it was "locked up"; and a few ultimately had to be decided unilaterally by the President. It was only in cases of exceptional conflict that the Council, even in its own Reviews, included policy recommendations which did not in large measure grow out of interagency discussion.

It was precisely the Council's developing status as a key part of the formal machinery for formulating current programs that most clearly distinguished it, as a planning instrument, from the National Resources Planning Board.[22] The extent of the agency's future usefulness depends heavily on further development and acceptance in this regard.[23]

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[21] In addition to these calls in connection with the Annual Reports, first suggested by the Council, in 1951 and 1952 more restricted calls were issued in connection with the Midyear Economic Reports.

Interchange with Groups outside the Federal Government. The Truman Council members, along with those staff members more directly concerned, regularly met at least semi-annually with each of six advisory committees—those for Industry, Agriculture, and Consumers, and one each for the AF of L, the CIO, and the Railroad Brotherhoods—and in the last year of the Administration an advisory committee representing organizations of state and local government officials was inaugurated. These meetings—informal, off-the-record affairs centering around, but not constrained by, jointly prepared agenda—provided the Council with reactions to previous reports and information and with opinion on current and prospective problems. Between meetings both members and staff actively sought, as far as time allowed, to maintain an open-door policy on consultation with private group representatives.

In its contacts with private groups the Council not only listened but did some talking of its own, serving in some measure as an interpreter of the government's economic program. Its attention to this aspect of its operation was underscored by its substantive analysis, which emphasized the need for consistency between public and private economic policies if the goals of maximum stability and optimum growth were to be readily attained. The President encouraged efforts to make better general economic information available to private economic decision-makers and to urge upon them a more alert concern for the needs of the whole economy and for their own longer-range interests.

Starting in 1949, the Council experimented considerably with a program of regional economic studies. This got under way with the sponsorship of a study of "The Impact of Federal Policies on the Economy of the South," prepared by arrangement with the National Planning Association.[24] It was followed by similar studies of the New England[25] and Southwest[26] regions, both organized directly by the Council. The New England and the Southwest committees—in each case composed of economists drawn from academic staffs and the Federal Reserve Bank of the region—were given a maximum scope and independence. Both undertook extensive research programs, sounding out the views of all major economic interest groups and the government agencies in the region.

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[22] For an analysis of the consequences of the latter's aloofness, see John D. Millett, *The Process and Organization of Government Planning* (New York, 1947).

[23] It might be remarked that the kind of group-thinking process just sketched—which process, of course, has been the essence of the Council's operation, internally as well as externally, and out of "report seasons" as well as during them—is displeasing to some scholars who have a nose for the unadulterated atmosphere of "pure" independent research. They find it unhappily cumbersome in its methods, insufficiently thorough in its analysis, and murky in its results. For remarks in this vein directly related to the Council, see M. Bronfenbrenner, "Postwar Political Economy; the President's Reports," *Journal of Political Economy*, Vol. 56, pp. 373–91 (Oct., 1948). Certainly the institutional mind is costly in time and effort and usually, as it turns out, involves some lost motion. And certainly it should strive for maximum clarity in its utterances. But its functioning does not bear close analogy to academic research; rather, in the context discussed here, it is one of the essential processes for organizing authoritative agreement in a polity where no one is generally credited with omniscience.

[24] Published through the cooperation of the Joint Committee on the Economic Report as *Economy of the South* (Washington, D. C.: Government Printing Office, 1949).

[25] See *The New England Economy* (Washington, D. C.: Government Printing Office, 1951).

[26] *The Southwest Economy* (Washington, D. C.: Government Printing Office, 1952).

The Council was anxious not only to sponsor similar studies in other parts of the country, but also to find a means of sustaining the contacts with regional economists and other groups which the original projects had produced. Without in any sense intending the development of an elaborate field operation, it recognized the value, to an agency preoccupied so much of the time with aggregate and global economic problems, of the eyes and ears and local perspectives which this arrangement would afford.

Relations with Congress. Probably no question involving the Council has raised as general an interest among students of government as that of its relations to Congress. This matter was a point of dissension within the original Council and was an issue in the resignation of Chairman Nourse late in 1949.

Disagreement over the Council's proper relations with the Congress has stemmed partly from the false but, as we have already noted, persisting idea that it was to behave as some kind of economic Supreme Court equidistant between the legislative and executive branches. It has stemmed partly from uneasiness about the Council's professional integrity when cast in the role, before congressional committees, of oral advocates of the President's economic policy. Essentially, however, the problem of oral advocacy is no different from that of written advocacy, already considered.

In part, objections to the Council's appearing before the congressional committees and otherwise maintaining close relations with the Congress reflect the rather more substantial argument that staff advisers close to the President should seek anonymity. There would be much to be said for this view if the Council's only intended function were in fact that of advising the President privately. Certainly this mode of operation would have its compensations for the Council members. The trouble with it is that in writing the Employment Act, Congress clearly did not intend the Council to remain anonymous. This is borne out not only by the testimony of legislators who were most active in framing the Act but also by the views of the Joint Committee on the Economic Report.[27] Congress' reasons for this course were substantial.

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[27] The first airing of this issue appeared in an article by Edwin G. Nourse and Bertram M. Gross, "The Role of the Council of Economic Advisers," this REVIEW, Vol. 42, pp. 283–95 (April, 1948). The case against Council participation in congressional hearings was developed at greater length by Edwin G. Nourse in "Why Dr. Nourse Broke with the President," *Collier's*, February 18, 1950, and *The 1950's Come First* (New York, 1951). The case for Council participation in congressional hearings has been stated by members of Congress who contributed to the enactment of the legislation under which the Council was established and by others serving on the Joint Committee on the Economic Report. For example, see the views of Senator Ralph Flanders, "Administering the Employment Act," *Public Administration Review*, Vol. 7, pp. 223–24 (Autumn, 1947), and of Senator

The first was the controversial status of economics as a discipline. In this situation, it was and is healthy, and educationally desirable, for the research methods and analysis of the President's economic advisers to be open to congressional cross-questioning. Contrary to the frequent impression, the practice proved to be more of a help than a hindrance to the work of the Truman Council. One of the most exacting tests to which executive officials can be subjected is careful probing by seasoned legislators of the factual basis underlying their recommendations.[28]

In the second place and more important: just as a close working relationships with Congress—and more particularly, with the Joint Committee—can assist the Council, so also it helps the Congress in framing its legislative program. Like the President, Congress wants, in the way of analysis of current facts and of the probable economic effects of policies recommended by the President, an interpretation which goes beyond the printed page. It receives this service from administrative officials concerned with particular parts of the President's program; it would seem to be entitled even more to the assistance of an agency which, of all the executive agencies, is supposed to have the best chance of maintaining a balanced and comprehensive view of the program as a whole. With the exception of the first chairman, all Truman appointees to the Council seem to have felt that it would be incongruous for the Council, after, it might be said, having talked with everyone else, to refuse to talk directly with those who were making the final policy decisions which so much concerned it.

The Council's relations with the Joint Committee through 1952 included appearances at both executive and public sessions, some informal cooperation on research between Committee and Council staffs, and, as already noted, collaboration in supplying "Economic Indicators" to legislators and to key personnel in the executive branch. Mainly because of the press of other business, however, the Committee-Council relationship was never strengthened, even after Mr. Nourse's departure, as much as the other Council members thought desirable.

III. INTERNAL ORGANIZATION

The theory of the general economic staff function embodied in the Employment Act cannot come to much unless it is supported by effective organization

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James E. Murray, *Washington Post*, November 5, 1949. The Joint Committee, in the majority report of June, 1950, dealing with the President's January, 1950 Economic Report, also expressed itself on the subject: "Full and free discussion of economic problems with those who have the statutory responsibility to advise the President on economic policy is essential to a complete understanding of the President's Economic Report by the committee and, therefore, to the committee's fulfillment of its responsibilities under the Employment Act." (81st Cong., 2d sess., Report No. 1843, p. 21.) For a more general discussion see Bertram M. Gross, *The Legislative Struggle* (New York, 1953), pp. 295–96.

[28] *If* the committees' investigative purposes and methods are constructive. The Council's salutary experience in this respect was due in large measure to the excellent manner in which the Joint Committee on the Economic Report conducted its hearings.

and procedure within the Council. There is space only for some selected comments on the experience of the Truman years in this regard.

The Three-Man Council. We shall not undertake here to discuss the current ill-repute of the multi-headed organizational form among American students of administration. But we do question the wisdom of automatically condemning it, as applied to the Council, on doctrinaire grounds. Viewed in the light of the agency's particular circumstances, the issue is a close one.

In economics it still is true that "in a multitude of counsellors, there is safety . . . ," and it was this view which led the House conferees on the Employment Act to insist upon the three-man form. Certainly it is likely that, leaving personalities and other random factors aside, the confidence of the public, the Congress, and possibly the President is greater in the joint economic advice of three reputable advisers than it would be in that of any one of them. Thus, other things being equal, the Council form has a clear public relations advantage. Moreover, it is certainly true that during the Truman years debate and compromise among the members often resulted in a better balanced and more reliable product.

It is a rather superficial error, however, to assume that the issue between a single head and a Council of three actually involves a choice between one "counsellor" and several. The official utterances of any agency head, no matter how many human craniums are embraced in that term, are ordinarily, if the agency is functioning with a modicum of efficiency, the work of many minds. "Singleheadedness" obviously does not limit an agency's mental resources nor, in the case of an economic advisory agency, confine it to lone-wolf analysis instead of collective analysis. The real issue between the one-headed and three-headed form, then, is simply between alternative ways of organizing the collective thinking so that it can result in decisions, conclusions, or "positions."

Viewed in this light, a committee of peers cannot on the basis of the Truman Council's experience be judged an exceptionally efficient device for producing decisions in the field of economic diagnosis and policy analysis. Following what seems to be the only feasible course for presidential advisers endowed by law with a considerable public role of their own, the Council during the Truman Administration habitually refrained from speaking publicly and officially with a divided voice.[29] Consequently, the development of agreement within the Council frequently was a tortuous process. Deadlines could not be met with the same ease with which a single executive can always, if the calendar requires, decide a dispute within his staff. Usually they were met, but often only at the expense of extra working hours and distracting tactical maneuvering within the Council. Occasionally, when an agreement could not be reached in time, the result was public silence on a significant policy question. More frequently the result was a greater degree of net cautiousness in appraising the economic outlook and, in particular, in pursuing analysis into the long-run future than probably would have characterized the work of all or most of the Council members individually.

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[29] A partial exception to this policy was made for the first time in the January, 1952 Annual Economic Review with the inclusion of a short separate statement by Mr. John D. Clark on monetary and credit policy. In their final Review (January, 1953) the Truman Council members soloed rather more freely, with separate statements by both Messrs. Clark and Keyserling, Clark's being in outright disagreement with a considerable portion of the Review, Keyserling's only amplifying or paralleling one aspect of it. In no case, it should be noted, did the policy of public unanimity conflict with the freedom of members to vary the emphasis of their own speeches, articles, or other individual public statements.

This is a substantial indictment. But before it is taken as conclusive, an additional consideration is in order. It can be argued that most of these difficulties, while unfortunate in themselves, simply reflected the basic complexity of the policy integration problem which had to be threshed out one place or another, and as much as possible among peers—i.e., agency heads—short of the President. Much of the threshing-out process which the committee form of organization forced the Council to do within its own confines, particularly during the preparation of the Economic Reports and Reviews, may have saved the White House staff, and ultimately the President, from having to engage more extensively than they did in the far more ponderous arbitration of differences among Cabinet members and other agency heads. This is a sound argument, of course, only to the extent that the differing views of the three Council members approximated important differences of opinion elsewhere within the executive branch. Frequently, but not always, this was the case.

The deliberate pace which the three-member form forced upon official Council decision-making needs also to be seen in the perspective of the other staff services at the President's command. Since he was already equipped, in the White House and the Budget Bureau, with specialists in the enormous volume of day-to-day tactical decision-making the presidency involves, the justification may be all the stronger for staff work dedicated to the second look and the broader and more reflective view.[30]

The effects of the multi-headed form on topside-staff relationships within the agency were also mixed. The council form permitted a useful division of labor among the members, with each assuming primary responsibility for working with the staff in the fields of his greatest professional interest and competence—as far as the respective backgrounds of the members allowed. This facilitated extensive participation by Council members in the early phases of work on any project, and, by intermingling Council and staff work, increased the extensiveness of staff members' topside contacts. But also, by inviting the doctrine that "each Council member is his own economist," it probably made for less final reliance on the staff than would have been necessary in the case of a single adviser.

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[30] This last point gains cogency from the fact that Council members (and staff members as well) did spend a considerable part of their time mixing *as individuals* in the rough and tumble of daily presidential business. By means of this quasi-explicit distinction between their individual and collective roles, the members of the Council sought a detour around Millett's 1947 judgment that two members of the Council would have to subordinate themselves to the third if the new board were not to become excessively remote from the President and his other advisers. See Millet's *The Process and Organization of Government Planning* (cited in note 22), pp. 167–68.

The basic condition which, when coupled with a reasonably clear yet flexible delineation of staff assignments, has kept the multi-headed form workable within the Council is simply the agency's small size. In an organization involving less than 20 professionals, where these share close working interests and readily talk each other's language, the chain of command can be relatively looser, shorter, and less formal than would be necessary in a larger, more heterogeneous organization.

Staff Organization. In terms of administrative architecture, the Council staff throughout the Truman Administration was a "short, wide" organization with a minimum emphasis on hierarchy. The bulk of the professional staff was made up of economists of relatively high civil service grade who were individually responsible directly to the Council for such specialized subject-matter areas as monetary and credit problems and policy, wage and manpower problems, and international economic problems, and who at the same time were thought to have a general competence in economics and something of a "feel" for public policy problems. In a few instances these senior staff members had assistants drawn from the middle range of the professional economist civil service brackets. Professional staff members, besides analyzing developments and prospects in their individual areas, served on a set of substantive staff committees (for example, one having to do with price and wage relationships and policy, and another concerned with making projections of national income and product components) which cut across the individual subject-matter areas and sometimes included participants from other departments and agencies.

These substantive staff committees, particularly because staff members were likely to serve on more than one of them, facilitated the integration of work within the agency as a whole. This was further implemented by periodic meetings of the full Council and staff. In addition, the integration of the agency's product was facilitated by a reports or editorial committee, which was responsible for the editorial coordination of the agency's regular reports at the staff level and, in the case of the last two semi-annual reviews, for first-drafting most of the manuscript on the basis of staff memoranda concerning developments and problems in the various subject-matter fields; a statistical unit, which helped to service the needs of Council and staff for statistical compilations and analysis, and, in particular, supplied extensive statistical data for the reports; an administrative officer (or, at an earlier stage, executive secretary); and staff members who served as personal assistants to individual Council members.

This somewhat rambling and highly flexible administrative pattern seemed to serve the needs of the Council with considerable success; here again the small size of the staff had an important qualitative bearing. By facilitating continuing and highly informal communications within the staff and by forcing a multiplicity of roles on staff members, it permitted an organization conducive to the extensive and highly interrelated coverage of economic problems which the agency's mission demanded, and at the same time avoided cumbersomeness.

CONCLUSION

It perhaps goes without saying that we think the agency should be continued, and be strengthened, not weakened. As for what we think should not happen, it should not retreat into the half-world of professional isolation. It should not be dissociated from its intricate network of relations with the President, with other executive officials, and with the leaders of key private organizations. There should be no muddying of its clear reporting responsibility to the President, and no diminution of the Council's emphasis upon detailed analysis of current economic facts or of its attention to the adequacy of available statistics. The agency should not mushroom into a considerably larger organization.

There are a number of things we do hope to see. The Council's communications-center and thinking-center sides should grow in balance. There is need for greater precision in the policy formulation procedures which channel through the agency. In particular, the Council's process for formulating long-range goals for the American economy should achieve fuller participation by business, agricultural, labor, consumer, and professional economic groups and by other government agencies, and the process should become more specific in its results. The Council's attention to the inseparable interrelationships between foreign policy and the course of the domestic economy should be reinforced, and its emphasis on the role of state and local governments in domestic policy increased. The regional study program might well be extended to cover a few more areas and should focus attention on the institutional framework of regional planning. Efforts should be made to develop concepts bridging the present gap between "economic planning" and "physical planning." Resources permitting, we favor more orientation toward theoretical analysis in the twilight zones between economics and the other social disciplines, seeking to improve the former's usefulness as a policy tool. We should like to think that at least annually the Council could bring forth an intensive treatment along monographic lines of a key economic problem or program. To do all of these things the agency would need a slightly larger budget and a few more people.

So far as organization matters go, we are not, in our own minds, wedded to any of the internal patterns and procedures of the Council during its first six years. Experimentation should continue, but cautiously and with an understanding that the economic staff function could easily be weighed down with too much formal administrative structure. Whether strengthening of the chairman's status and administrative authority will enable the Council to operate as satisfactorily as a single adviser is, in our minds, an open question.

As for what will actually happen, we confine ourselves to the prophecy that the economic staff function will, in some form, survive. Those who, near the

Council's outset, guessed that it would go the way of the National Resources Planning Board[31] probably will be proven wrong.

[31] Cf. R. G. Tugwell's highly stimulating discussion of central planning, "The Utility of the Future in the Present," *Public Administration Review*, Vol. 8, pp. 57–59 (Winter, 1948). On the ground that "any planning tied exclusively to the Chief Executive will never become central planning in any defensible definition of the term," he concludes that the Council does not "possess very great survival value," that it is "vulnerable to its natural enemies and possesses no strength of its own," and that "when this experiment is finally liquidated, we . . . are not likely to be much further advanced in the development of central planning." Committed to the thoroughly monistic policy-forming and -executing process he finds in Britain, his argument is not with the Council as such but with the whole separation of powers concept. Despite its brilliance, we do not find in his exposition any adequate refutation of the Employment Act's underlying thesis—namely, that by fortifying what he happily calls "agencies of conjuncture" in *both* the executive and the legislature, and by strengthening the connecting rods between them, it is possible to develop workable programming machinery within our present constitutional framework. Nor in all Tugwell's castigation of things as they are here and idealization of things as he sees them in Britain do we find any hints of a practicable program of constitutional reform for this country.

THE FEDERAL BUREAUCRACY AND THE CHANGE OF ADMINISTRATION*

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The period starting November 5, 1952 has been called "The Time of the Jitters" for the middle and upper levels of the federal bureaucracy. Political change is usually disruptive and always accompanied by uncertainty and insecurity. Intellectual acceptance of this truism does not insulate one from the effects any more than death and taxes, for all their recognized inevitability, cease to be sources of distress.

There were many reasons to anticipate that the 1952 election might result in a greater than usual degree of change, or at least of uncertainty. In many ways there were no real American precedents for the situation. The period of executive control by the outgoing party had been characterized by the unusual duration of 20 years, by highly controversial political policy, and by profound social change. This was the first change of administration under conditions of modern Big Government—the first since the American government found itself with accepted broad welfare and economic responsibility on the domestic scene and with major power responsibilities in a divided and warring world. Since the last full change, the size of the federal civil service had increased over 400 per cent, governmental expenditures over 16 fold. This was also to be the first full change of administration to show the effects of the 20th Amendment.

The new Administration not only had a mandate for extensive policy changes but was also clearly committed to do "something" about the number and kind of federal employees although—as with election issues generally—what and how much were necessarily vague. Certainly "corruption" and "throw the rascals out" were major campaign themes. Housecleaning was a dominant note and reorganization and reduction of agencies and personnel were to be the big brooms.

It would be cavalier to attribute all of this to cynical compliance with the old campaign principle, "nothing succeeds like excess." There is ample evidence that Candidate and President-elect Eisenhower and many of his leading supporters genuinely believed that the executive branch had become contaminated with grafters, incompetents, political hacks, "socialistic thinkers," and even a not inconsiderable number of disloyal persons, and that a wholesale substitution of honest men with administrative ability would solve most of our problems. The administrative talent would have to be found in men with a different social orientation than that which presumably had dominated the executive branch during the previous two decades. If the polls are to be believed, a large portion of the general public shared this view.

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* This paper was delivered at the forty-ninth annual meeting of the American Political Science Association, September 11, 1953. Minor revisions have been made to reflect the situation at the beginning of the Administration's second year.

Unlike the typical European bureaucrat, nine out of ten U. S. civil servants, it is safe to say, had never before experienced a complete change of administration. For them this was clearly a time of bafflement and restiveness.

In view of this background, it is surprising that the actual effects of the change of administration on the bureaucracy did not turn out to be more drastic than they were. The returns are not all in and it is perhaps too early for firm conclusions. Although specific findings must be tentative, it is useful to appraise the general trends on the basis of such evidence as is available. My necessarily undocumented sources are primarily extensive interviews with present and former bureaucrats, political officers new and old, members of Congress, and newspapermen. From a mass of contradictory evidence and opinion—much of it highly flavored with feeling at this juncture—I have attempted to distil what appears most reliable and significant. I have restricted myself to four aspects of the problem: (1) organizational changes, (2) presidential leadership, (3) personnel actions, and (4) the political and moral climate.

I.

It seems clear that Mr. Eisenhower was convinced, as he reiterated throughout the campaign, that his was a mission to bring moral regeneration and administrative efficiency to the government. In the days before Inauguration and immediately thereafter, his interest and energies appear to have been directed largely to these phases of his task. Policy issues played a subordinate role; in fact, there is evidence that he regarded policy as the responsibility of the legislative branch of the government, and as only an ancillary function of the presidency.

Not many persons in or out of the government seemed aware of the potential significance of the first full trial of the 20th Amendment, commonly regarded as solely a device to end the practice of lame duck congressional sessions. Inasmuch as it became part of the Constitution after the 1933 Inauguration, it had never been tested under conditions of complete party change. In previous changeovers the new President had four months between election and taking office; and he and his new administrators had about nine months to organize themselves, get acquainted with their jobs and their staffs, and consider budget and policy recommendations before the Congress assembled in Washington (except when the President himself decided to call a special session).

On this occasion, however, the President would take office only eleven weeks after election. He and his department heads would face immediately a fully organized Congress, already in session and prepared to ask for executive testimony at hearings the next morning if in the mood. The budget message, the economic report, and perhaps one State of the Union message would already be before Congress, and the new administrators would be expected to come forward in a short time with alternative proposals. It has been contended that the "double budget" process (familiar in both state and local governments) is helpful not merely because it removes the necessity of having a new administration operate for 16 months under an opposition budget but also because budget preparation is the most rapid, efficient, and compelling way for a new agency head to become acquainted with both the personnel and the problems of his agency. There is considerable evidence that this time, at least, it did not work out that way. There is little doubt that the paramount demands of members of Congress and congressional committees impeded the attempts of the new top executives to become acquainted with their responsibilities and personnel in reasonable time and under favorable conditions.

It may have been awareness of these new time pressures that led the new Administration to take quick action to expedite its task. In fact, as early as June, 1952, despite the humiliation of similar activities in 1948, Mr. Brownell asked McKinsey & Co. to make a survey of the responsibilities and requirements of the policy positions in the executive branch. It is also likely that a substantial portion of the top executive level may have been decided upon even before the elections; less than two weeks thereafter the President-elect announced the names of six Cabinet choices and had apparently selected his Director of the Budget. Before the month was concluded he had announced all Cabinet and several other key appointments.

One week after the election, at the invitation of President Truman, the representative of the President-elect, Joseph Dodge, later to be named Director of the Budget, was in the Executive Office in Washington closely observing every step in the preparation of the forthcoming budget. Mr. Lodge, later to be named head of the U. S. delegation to the United Nations, was present with a similar but less tangible assignment in connection with foreign policy and military affairs. Less than two weeks after the election the President and the President-elect held conferences in the White House, joined by key Cabinet officers, at which time there was turned over to Mr. Eisenhower three volumes of briefing papers from the National Security Council.

At the departmental level advance collaboration between the outgoing organization and the prospective newcomers was most conspicuous in the Treasury Department, where the new top team was hard at work from November on. In general, where such collaboration took place it appears to have been reflected in later happier relations between the new agency heads and the old bureaucracy, especially in Budget and in Treasury, but it is of course impossible to know how much to attribute to this and how much to other favorable factors.

At the end of November, the President-elect announced the formation of a three-man committee, which was given official status immediately after he assumed office as The President's Advisory Committee on Government Organization. This committee, composed of Milton Eisenhower, Arthur Flemming, and Nelson Rockefeller, worked quietly with a small staff and within a few months presented 21 studies. Many of its recommendations have been reflected in subsequent reorganizations. The fact that these studies were unpublicized personal submissions to the President seems to have improved both their quality and their usefulness.

Most close observers are agreed that some organizational improvement has taken place at the White House level. It appears in general to be a tidier affair, with considerable advantage having been taken of the large number of studies which have been made of the Executive Office in recent years. The White House staff was a reasonably well integrated group before it arrived in Washington, for it had been meeting regularly at the Commodore Hotel in New York. An earnest attempt has been made to assign staff members clearly delineated functions. The Administration is experimenting with a plan widely discussed among political scientists for several years—establishment of a relatively informal chief of staff for the White House office, a post now designated Assistant to the President and occupied by Sherman Adams. While Governor Adams has been subjected to much criticism from members of Congress and others who have felt unnecessarily blocked off from the President or have been disappointed by what they considered a slow response to their demands, he appears to be popular and appreciated within the staff and by the President. The contrasting views are simply opposite faces of the same coin. Adams has assumed a role not unfamiliar to intimate presidential aides, that of whipping boy for the President, somewhat reminiscent of the William Loeb role in Theodore Roosevelt's Administration with the then familiar newspaper headline, "Loeb Takes the Blame."

Other reforms have been made at the highest administrative echelon which have long had strong support in scholarly literature, although it is not clear that they will survive. The oft-repeated recommendation that the Council of Economic Advisers be replaced by a single economic adviser to the President has been substantially acted upon through Reorganization Plan No. 9, which, while retaining the three-member arrangement, vests all administrative functions of the Council in its chairman. However, the previous confusion may recur since other economic advisers have sprung up on the White House staff—Dr. Gabriel Hauge, one of the administrative assistants, and Mr. Williams, Undersecretary of Commerce, who was transferred to the White House to act as a vehicle for "grass roots" reporting of economic conditions throughout the country. A new Advisory Board on Economic Growth and Stability has been established as a coordinating device. This may reflect the sensitivity of the President regarding the cause of the downfall of his last Republican predecessor. He has told small groups that there may be need of an equivalent of the National Security Council to contend with the internal threat of depression.

A long felt need to clarify the respective roles of the National Security Resources Board and the Office of Defense Mobilization was resolved last April when the President sent Reorganization Plan No. 3 to Congress and established ODM as the permanent defense mobilization agency and abolished NSRB. The specious distinction between long-range and short-range planning was eliminated, and an attempt was made to bring planning and operations into somewhat more intimate contact by giving ODM some direct economic responsibilities, such as control of the stockpile of critical materials. Whether, however, there are any essential distinctions which will shield the present ODM from the causes of the demise of NSRB remains an open question.

An important step in general conformity with recommendations of the

Hoover Commission and other study groups was the expansion of the responsibilities of the chairman of the Civil Service Commission who, by executive order, has been designated the President's adviser and assistant for all personnel actions except presidential appointments. At the same time, the Liaison Office for Personnel Management, in the White House Office since 1939 and not conspicuously successful, was abolished. The President underscored the importance he attached to personnel actions by asking Commissioner Young to attend all Cabinet meetings and he, like the Director of the Budget, has become a *de facto* member of the Cabinet.

Some who have observed this phenomenon from close quarters have questioned whether those in a staff and advisory relationship to the President, like his budget and personnel officers, are not really handicapped for the most effective exercise of their functions by participating in Cabinet meetings at which decisions are now frequently made. The question is whether they are not thereby disarmed from rendering to the President the kind of candid advice which can be given to him personally but not in front of Cabinet officials.

Interestingly, some of the most articulate spokesmen for the principle of giving the President more direct control over the personnel machinery of the government seem to have had their convictions shaken by a change in administration. Some are now complaining that if the civil service administrator becomes a part of the President's political team it tends to take away from the civil service the kind of job protection which they feel is one of the Civil Service Commission's primary responsibilities. The role and behavior of the Commission has, of course, become the bone of contention one might expect in a changeover period. But there is virtually no disagreement that the recent organizational shakeup of the Commission's staff was long overdue and salutary.

Another organizational anomaly was removed when the office of Director for Mutual Security was removed from the Executive Office of the President, an arrangement which had previously made one man a presidential staff coordinating officer as well as director of one of the operating agencies he was to coordinate—the Mutual Security Agency. This might have been expected to please those who felt that if this type of dual role was to be permitted at all, it should be vested in the Secretary of State. Since, however, reactions to organizational arrangements are always colored by attitudes towards the immediate incumbents, some of those persons now find themselves unenthusiastic about the organizational improvement because they are unenthusiastic about the Secretary of State.

Especially interesting is the President's attempt to make use of the Cabinet as a collegial body. He has experimented with collective decision-making, and has made active use of Cabinet committees. Cabinet level committees, for example the Defense Mobilization Board, are now often attended by Cabinet members themselves rather than by fourth and fifth level subordinates. The revitalization of the Cabinet as a body is, of course, standard practice for the first few months of a new President—President Truman's brief encounter with this practice will be remembered—and there is a widespread feeling, particularly among those who disapprove of the technique, that it will go into discard when, as they put it, the President understands that the country needs a President rather than a chairman of a board of directors.

Some of the reasons given for the added role of the collective Cabinet are of special interest. It is explained that when the agency heads first arrived they brought with them a profound distrust of the inherited bureaucracy. A frequent complaint was "I don't know whom I can trust." This severance of the top executives from the more experienced personnel in government threw the former into greater mutual dependence and caused a degree of discussion of departmental problems within the Cabinet which was quite unusual. In addition to the centripetal force of what one official called the feeling of living among "unfriendly natives," there was the previously mentioned role of the 20th Amendment which caused the new officials to learn rather abruptly and under difficult circumstances that Congress was like no board of directors or stockholders they had ever known in industry; the consternation and surprises of that experience also threw them closer together. But perhaps most important is the fact that, under President Eisenhower's methods, basic decisions are actually taken at Cabinet sessions and are likely to be made by the group. In some quarters this is regarded merely as an early experimental stage which will not endure for the same institutional reasons that have forced other presidents to drop such practices. Others feel confident that it will continue since the President, given his personality and working habits of many years, knows no other way to operate. However that may be, there is little doubt that the repetitious newspaper talk about the spirit of the "team" has thus far contained considerable reality.

The Cabinet committee embodied in the National Security Council has at last come to life and is an effective central war cabinet, proving a vitalizing and coordinating force. This is attributed primarily to the active role of the President himself. Great credit is given also to the energy and skill of Robert Cutler, the President's liaison man on NSC matters. Some of the success of the Council is no doubt due to the negotiating talents of the Vice-President, who has been given an administrative role in this as well as other fields not paralleled by any previous Vice-President. Mr. Nixon presides over NSC meetings in the absence of the President (in the previous Administration it had been the Secretary of State), just as he presides over the Cabinet in similar circumstances. He is also informally the head of the President's liaison staff with Congress. It should be especially instructive for political scientists to observe closely in the ensuing months the development of this experiment with a new role for the Vice-President.

I will not attempt to review administrative developments in the individual departments, except to say that no accurate generalization can be made. The experience, and the reaction to that experience, has varied from very good to very bad. By and large, with highly articulate exceptions, civil servants seem to have accepted the reality that President Eisenhower could not have appointed the kind of Cabinet which a successful Democratic candidate might have, that inexperience was an inescapable characteristic of the Cabinet of a party which had been out of power for 20 years (though there seemed to be no escaping the contemptuous view of the oldtimer for the neophyte, even if the newcomer was his boss), and that it would be required to have heavy business representation. The emergence of a Cabinet (as well as sub-cabinet) largely characterized by lack of direct acquaintance with the federal government reflects some special aspects of our government structure for which the price is often heavy. Nevertheless, the pat generalizations common a few months ago are beginning to disappear in the face of the emerging facts. One of the businessmen inexperienced in government, Mr. Humphrey, has proved the most apt learner and has generated real respect internally and externally, even among those who do not share his policy views. On the other hand, one of the ex-governors, Mr. McKay, has had more than his share of difficulty. Thus, department heads are now being evaluated individually on their merits, rather than stereotyped. The overall verdict appears to be that, making allowance for the probably inescapable predominance of the novice, it is a group no worse than most of the Cabinets of the previous two decades and perhaps better than some.

A brief word is in order on the three largest reorganization moves at the department level. The first was the creation of the Department of Health, Education and Welfare, a change previously urged by the Truman Administration. It is too early to say whether this reorganization will make any fundamental difference. For a time, the conspicuous fact was the great difficulty Secretary Hobby was having in staffing some of the top posts in her department, a difficulty some other agencies appeared to share in lesser degree. The reorganization (Plan No. 7) which took from the State Department its so-called "operating" functions was generally unpopular among professional students of public administration. It was, however, a move which the Secretary of State desired and it followed the recommendations made by The President's Advisory Committee on Government Organization (the Rockefeller Committee). The important reorganization in the Department of Defense (Plan No. 6) will be argued about for some time, but clearly it was an enterprising attempt to move in the direction of increasing civilian authority within the department, an achievement which eluded Mr. Wilson's very able predecessors. It remains to be seen whether he can succeed, but it is clear that he is prepared to put up a hard fight for control.

II

On the whole, it would appear that the broad lines of administrative action have been thoughtful and sound. Nevertheless, there has been a dramatic net decline in the role and leadership of the executive which has had a stunning effect on the bureaucracy. Civil servants of the past generation were bred in the prideful environment of executive leadership. Theirs was a tradition of proposing and initiating new ideas, programs, reforms. Theirs was the task of "educating" the Congress and even doing battle for policy advances. They were the servants of the head of the government, who was held accountable for the successes and failures of an administration, and who acted accordingly. There was exhilaration in this, a sense of purposefulness and challenge to imagination and resourcefulness, with a premium placed upon the courageous mind, even in periods when executive proposals were not faring well. This temper reached surprisingly far down into professional and even clerical levels.

While this temper had gradually subsided during the Truman years, the first months of the new Administration represented an almost full reversal. It had not been supposed that the President took literally the textbook maxims he proclaimed during the campaign about the three separate branches of government, including the notion that the President only proposes while the Congress disposes. It now appears that he did. Some close to him have said that he entered the presidency under the impression that an unconstitutional aggrandizement of executive power had taken place in the preceding 20 years and that he would have to bend backwards to redress the balance. In any event, during the past year we witnessed a rebirth of the Whig theory of the presidency—held by most Republican presidents of the past century, but which hardly seemed credible in 1953—that the President is the servant of the Congress.

This abdication to Congress, or the permitted usurpation by Congress of executive authority, has been the source of basic difficulties for the executive branch. It has given executive employees a sense of declining significance. They feel unlooked-to for development of policy, and attached to an instrument without sense of direction or central purpose. Also, it has created a degree of accountability to Congress for day-to-day administrative activities which violates every principle of executive efficiency and integrity. A word of criticism from a congressional subcommittee sets in motion reactions which indicate that some department heads are not yet attuned to the fact that the executive branch has a basis for authority of its own.

The enlarged role of Congress as well as its own apparent ambivalence are blamed for the Administration's failure to accept as a rule of administration that national policy cannot be successfully administered by men who do not believe in it (although the most enthusiastic devotees of civil service sometimes make the same error), and has resulted in a long series of appointments of officials whose careers and utterances indicate firm opposition to the programs they are to administer. The list is impressive: the new head of the Rural Electrification Administration is regarded in his home state of Minnesota as an opponent of REA projects; the new head of the Housing and Home Finance Administration fought hard and consistently in Congress against the program he is now to administer;[1] an arch protectionist who voted against the Reciprocal Trade Program when he was in the House has been appointed to the Tariff Commission; an Assistant Secretary of Interior appears to oppose conservation and has testified that the public lands should ultimately be turned over to private citizens; the new general counsel of the Department of Health, Education and Welfare is a former congressman who voted to restrict social security coverage; the new chairman of the Federal Trade Commission previously made his living representing interests who did battle with the Commission; and the President's original appointee to head the Bureau of Mines was so articulate in his opposition to the Mine Safety Law he was to administer that the congressional committee forced the White House to withdraw his name.

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[1] Sharp criticism accompanied this appointment. Whether because of it or not, Mr. Cole has exhibited balance and open-mindedness regarding his responsibilities in office.

What then is to be the conscientious official's reaction to a situation in which he finds that the head of his agency not merely disagrees with previous methods or policy particulars, but appears to be opposed to the entire enterprise, at least as the employees have been taught to view it?

What we may be witnessing, as Walter Lippmann has remarked, is an attempt to apply the principles of a constitutional monarchy to the American system, but without the advantages of a prime minister or party leader; more likely, it is the early stage of an educational process on the nature of American government. According to a British evaluation "President Eisenhower is not a politician and, as a professional soldier, has been living outside the United States for a great part of the past forty years. To him, as to many other Americans who have never had the opportunity nor the curiosity to study the workings of their own political system at first hand, the duels and conflicts between Congress and the Presidency over the past twenty years have seemed largely unnecessary, the work of factious and fractious men which could be avoided with a little common courtesy and common sense."

There are those who are optimistic as to a future reassertion of the executive role in government, placing reliance on the President's reputation as a "slow starter" who has demonstrated capacity for firm leadership when finally at home in his environment. They also feel that the death of Senator Taft has forced upon the President a realization that the White House must be its own leader. Others regard the President's uncomplicated conception of the executive role in American government as being too profoundly part of the man to be revised by new experience at this stage of life.

III

The civil service personnel actions of the new Administration provide the most lively current conversation piece among government employees. The heat which has been generated on this issue is so intense as to make reasonably objective appraisal at this juncture extremely difficult. This is understandable; a large number of people are fearful for the security of their jobs and livelihood, and some are already unemployed.

The central issue is as old as it is complex: What is the proper balance between change and continuity in the context of our system? This would be a difficult enough problem standing alone, but it is complicated by many other interwoven problems. The answer is not at all clear, and there are no basic traditions to guide us. This problem in American government administration is in a very elementary stage of development.

We have already noted that with a few exceptions the top departmental executives took office with a considerable degree of distrust for their inherited bureaucracies. So strongly did one or two Secretaries feel on this issue that they continued, after taking office, to make public addresses in which both the ability and the integrity of civil servants were impugned. It is common in Washington to explain this fact, which is having enduringly harmful effects, by saying that the new executives were taken in by the extravagance of their own campaign speeches. But this is only a half truth. Its uncritical or partisan acceptance will only shield from view the various factors which caused a new administration to be suspicious of the desire or capacity of the civil service to serve it faithfully and effectively. There has been a tendency in Washington in recent months to talk about our civil service as if it contained a long tradition of occupancy by pure technicians and career personnel, selected and promoted through a competitive merit system, and bred in the customs of administrative neutrality. This simply is not the case, however much one may believe that it ought to be. And it is important that we be aware of the many factors during the last 20 years which have operated against the acceptance of such a tradition.

The civil service was in low esteem in 1933. The Roosevelt Administration initially was rather harsh with employees who appeared to be identified with the outgoing Administration (note the experience of the Bureau of Foreign and Domestic Commerce, known as a Hoover favorite) and it undertook a rapid expansion of government employment largely through new and emergency agencies whose personnel were exempt from the competitive system. It is useful to recall that cries soon arose that Roosevelt was destroying civil service and this became a campaign issue in 1936. Personnel recruited in those days remained in government and to a considerable extent were later blanketed into an expanded classified system. There is nothing unusual or improper about blanketing through executive order. Most civil service expansions have taken place in this way, and one of the largest blanketing actions was accomplished through legislation—the Ramspeck Act. Nevertheless, each such action arouses the suspicion of the opposition. There is little doubt, for example, that President Truman's executive orders of 1947 and 1948 were regarded as partisan actions by the opposition, and as being in the nature of "midnight appointments." Bureaucracies are most likely to achieve stable acceptance under circumstances in which the bulk of personnel are known to have served different administrations. A circumstance in which nine out of ten civil servants entered the government under a particular administration—and a more than ordinarily controversial one—does not help to obtain ready acceptance of the inviolate status of civil service rights and privileges.

Moreover, the circumstances of the past 20 years were not such as to encourage in the bureaucracy a temper of neutral government service. Men were attracted to the New Deal by a contagious and buoyant enthusiasm for a popular social revolution. "We are reshaping society and we are the better civil servants to the degree of our enthusiasm for our task." This was the common view of high level bureaucrats in the thirties. Many of them became well-known advocates of a program and a philosophy. Increasingly, they appeared before Congress to testify for Administration proposals, not just as disinterested technicians but as

Administration spokesmen. Anonymity was certainly not considered essential for the civil service. Whether or not one happens to favor this type of civil service activity is beside the point. The facts are worth noting as being sufficient to permit reasonable men to look somewhat askance at latter-day protestations that all positions under civil service must be considered utterly non-political and beyond the appropriate reach of new political officials. We talk about a career service, but is it persuasive to the outsider? Are the elements necessary for a career system present?

Under these circumstances it is easy to understand why, shortly after they took office, many of the new department heads began to exhibit the restiveness of men who were given to understand that their job was to overhaul their departments but who did not have adequate authority to select personnel. There is little question as to the sincerity of the distress felt by Mrs. Hobby, for example, when she told the House Interstate and Foreign Commerce Committee of her frustration in finding even her own immediate office, including the No. 2 job in the agency, under civil service. Hers was an extreme example of a widespread conviction that there was an absence of necessary freedom of action for removal and recruitment of personnel, commensurate with the responsibilities of a department head.

The argument is often made that the new officials could find within the civil service of their own departments persons to replace those they wished to remove from key positions. Like the Supreme Court, the bureaucracy follows the election returns, and many bureaucrats, if not a majority, were enthusiastic for the change dictated by the November election. But this begs the question, since the difficulty arose from a profound distrust of the federal bureaucracy and the circumstances were not such as to make plausible the finding of a solution within that bureaucracy. The distrust was unfortunate and in most cases unjustified, but it was the existing circumstance, and it was important that such distrust was felt even more keenly and expressed more articulately in Congress than among the new executives.

It was this felt necessity for additional freedom of action to control key policy jobs which led to the most broadly publicized of the new Administration's actions in the personnel field: the President's order creating Schedule C for exempted jobs and his direction to the Civil Service Commission to reexamine all classified jobs, particularly those which had been transferred from the old exempt Schedule A by President Truman. He ordered removed from the merit system, as improperly placed there, positions "of a confidential or policy-determining character" (E.O. 10440). The language of the order left wide latitude for the Commission—in conjunction with the departments—to be controlled by its own judgment.[2]

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[2] A special irritation was also removed with this order. Many positions acknowledged to be policy-level, and therefore in the excepted Schedule A, had been given the protection afforded classified employees as a result of President Truman's order of 1947 which provided *that if an employee with civil service status moved into an excepted position*, his civil service protection rights continued. The Eisenhower order terminated such special rights.

Regarding the principle of Schedule C there can be no quarrel: policy-determining jobs ought to be subject to change by a new administration. But, where is the line to be drawn? With the intermingling zones between policy and administration growing ever larger, what should be considered as policy determining for classification purposes? I have found the variation in views on this question quite extreme. Among those who take a general position that virtually no jobs below the ministerial level ought to be exempt, one of the basic arguments is that the differences between our two major parties are never "fundamental" enough to inhibit the ability of civil servants to carry out the policies of either party with energy and integrity—that the policy leeway allowed to any new administration is basically not very broad. But what is "fundamental"?

The new President seems to believe that the difference between his and the preceding Administration is quite profound. In late July he told a press conference, in which he was asked to appraise his first six months in office: "You could see that there was a very, very great, almost revolutionary activity necessary to pick up where others had left off and to begin again because there were opposing policies and ideas coming in after twenty years of another type of philosophy."[3]

While the President appears to speak too broadly, it is just as easy to underrate the differences between the parties—or at least between Presidents—on particular issues. Since employees administer particular programs, it is particulars which count. The degree of difference varies widely among departments and among smaller units. Differences on public power, land management, health insurance, public housing, and similar unresolved issues are real and great enough to appear quite fundamental to those directly engaged. They are fundamental enough to raise reasonable doubts whether a person whose emotional and intellectual resources have been absorbed in advancing a particular policy can suddenly reverse his course effectively. Even with the utmost good will, unintentional resistance could overwhelm the drive for change in such areas.

This problem would be relatively small in the Department of Defense, for example, where general agreement on objectives is accepted, however bitter the debate on the appropriate size of the Air Force or Mr. Wilson's wisdom in curtailing some of the research and development work. The problem is probably negligible in purely technical units like the Weather Bureau, although one is continually finding that there are more political issues even in such units than one had imagined.

Such differences indicate that no sweeping generalizations can safely be made. They explain in large measure varying types of personnel actions which have been taken among different agencies. They explain why no convenient formula for "how high shall civil service go?" can be equally valid in all cases and why personnel policy must be viewed in its political context. The question, for example, whether the position of bureau chief belongs in the classified service is too abstract; the real question is *what* bureau? I have found few who do not agree that at the present time the head of the Bureau of Land Management is a policy-determining position in an extremely controversial area and that it does not now belong in the classified service. However, few would contend that the head of the Bureau of Standards should not be in the merit system. Similarly, it is noteworthy that three out of the four Administrative Assistant Secretaries, posts which were widely regarded as too high for civil service at the time they were blanketed in, have not been touched while lower jobs have been changed. The important consideration is the character and environment of the particular position, not how high it is.

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[3] *New York Times*, July 23, 1953.

Quantitatively the significance of the new Schedule C appears to have been greatly exaggerated. One heard estimates running into the thousands regarding the number of jobs which would be transferred from the competitive service. The final returns are not yet in, but it now seems clear that the figure will be much lower. At the end of January, 1954, the Civil Service Commission had approved a total of 236 jobs for transfer from the competitive service. A considerable proportion of these were of the confidential variety, private secretaries and chauffeurs. The total number of Schedule C positions approved at that date was 879, but of these 197 were newly created positions and the remainder, 446, had been in the non-competitive Schedules A and B. The Commission had turned down 929 agency requests for Schedule C positions; of these, 102 were rejected twice.[4]

It is my impression also, as it is that of the director of the National Civil Service League, that most agencies have been scrupulous as to the number of Schedule C requests made to the Commission, but in this, as in other personnel actions, the variation is great. As suggested earlier, the greatest push towards change has come from the agencies most actively involved in controversial domestic policy issues. Interior, for example, asked for almost 400 Schedule C jobs (the great majority of which the Commission rejected), while Defense, with over half the classified jobs in the federal service, asked for only 52. The latter request may be considered somewhat more representative.[5]

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[4] In its December, 1953 report the National Civil Service League commented on Schedule C as follows: "If this category is honestly used to unblanket from civil service protection those jobs which are truly policy-making, rather than removing them for patronage purposes only, the career system will have been strengthened. To date the CSC has exercised proper discretion in placing positions in this Schedule. It is also making progress toward setting up basic workable standards for distinguishing between these two types of positions." Some Republican members of Congress have voiced criticism of the Commission's record. On November 10, Congressman A. L. Miller of Nebraska called for Chairman Young's resignation on the grounds that by rejecting more than half the requests for Schedule C positions by federal agencies he was not supporting "the Administration in helping to remove those who would sabotage the very Administration who gave you a job." *New York Times*, Nov. 11, 1953.

[5] The Department of Labor was attacked by Senator Butler (R., Md.) because he thought it had failed to comply with the spirit of the President's order in supplying a list of only 28 jobs for Schedule C.

Secretary Wilson has bent over backwards to protect the integrity of the civil service; furthermore, he has not held people suspect because of association with the previous regime, even at the political level. He has retained two Assistant Secretaries of Defense and the Under-Secretary of the Army from the previous Administration. Some people have offered the explanation that since the Secretary appears to have taken on a wide-flanked struggle with the military, every effort is being made to maintain full loyalty from the civilian side. Another consideration may have been that the preceding administrators in the department were Republicans.

In Interior, departures and changes have been relatively most numerous. Several incumbent bureau chiefs were not wanted. In almost every case they were offered other jobs in the department. Mr. Day, who was removed as chief of the Fish and Wildlife Service, gracefully accepted a lower post. Mr. Marion Clawson, however, then director of the Bureau of Land Management, refused to change jobs and challenged the Secretary to state specific charges, contending that rules and regulations of the civil service law required such procedure.[6] Secretary McKay found it sufficient to say: "It is evident that we would not be able to work together in any harmony under these circumstances and therefore your removal will serve to promote the efficiency of the Federal service." Here is a basic issue: Should Mr. McKay have been obliged to retain a man he did not want in the position of director of Land Management, unless and until he could show "cause," that is, incompetence or insubordination?

The actions of the Secretary of Interior in moving firmly to replace bureau chiefs have been explained as follows: First, Mr. McKay was really bent on making what he and the new Administration regard as important policy changes concerning public lands, power, and other functions of the department, which made his position different from that of many other agency heads. Many of the bureau chiefs in these highly controversial areas had voluntarily become public symbols of policy positions wholly contrary to those of the new Secretary. Second, he must have learned that Interior had traditional difficulty in controlling its bureau chiefs, who have had a well-known tendency to operate quite independently, developing horizontal lines to the Congress. Here was a department which graphically portrayed Paul Appleby's allegation that department heads are frequently only fronts for bureau chiefs. This, of course, does not explain why a good many positions below the bureau chiefs have also been placed in Schedule C, in some cases—for example in the Bureau of Mines—with considerable doubt as to the justification. Various parts of the record make it clear that Interior is an extreme example of lack of confidence in the existing organization.

The situations in Commerce and Agriculture are in many respects similar to that in the Department of Interior. On the other hand, the upper civil service has remained intact in the Bureau of the Budget, in the General Services Administration, in the Civil Service Commission, and in the Labor Department. The Post Office Department has taken steps to extend its merit system. Substantial personnel difficulties are reported from the Department of Justice, but highly specialized issues enter there in connection with the complicated and legally unclear civil service status of lawyers in the federal government.[7]

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[6] The Clawson case has a special history. He was originally a symbol of the attempt to take land management out of the political battle. He came from the arch-enemy agency, Agriculture, and cut his ties there to take this job which he was given to understand would be in the protected civil service. Hindsight, at least, throws considerable doubt on the wisdom of trying to protect such a job with civil service tenure.

The personnel policies of the new Administration have been vastly confused by the sizeable economy measures in operation. In my view, the reductions-in-force, real and anticipated, represent a far more disturbing influence on the civil service than the "unclassifying" of jobs or replacements. The new Administration has been giving federal employees an unremitting psychological pummeling through a constant stream of press releases regarding future budget cuts and releases of personnel. Actually, according to Commissioner Young, the number of job reductions between January, 1953 and June, 1954 will be about 180,000.[8] A considerable number of these will go by attrition and will not require dismissal of incumbents. This is not a high proportion of federal employment, but somehow the Administration, in its poor employee relations, has managed to make almost all employees feel that their jobs are insecure. Mishandling, and perhaps some deliberate exaggeration for the consumption of the party organization, appear to have caused a large number of ordinary lay-offs to be confused with political job replacement.

The Administration is encountering inevitable criticism for methods of handling reductions-in-force. There have been some improprieties, particularly in the Department of Commerce, but it is my impression that most of the difficulty is caused by problems which long antedate this Administration, reflecting the fact that we do not really have any government-wide career service—each agency's determinations are made independently of what is happening in other agencies—and the fact that Civil Service Commission rules have never laid primary emphasis on merit in determining the order of lay-offs.

The lack of rapport, the distrust, and the breakdown in communication between the political level and the bureaucracy below has not been reflected basically in violent personnel changes. The new Administration is finding it difficult to fill higher posts even when they are vacant. The big change lies more in the new relationship. In general—and nothing is altogether general in this highly varied picture—suspicion is directed primarily at the type of personnel so prominent in the past 20 years, the "planners," the "idea men," the people who translated vague policy objectives into substantive proposals, the intellectuals who kept contriving new ventures and new paths to explore. These people—"egg heads" is now the accepted term—are not in good standing;[9] they will depart or be quiescent. Insofar as substitutions are being made, the tendency is to seek the efficiency engineer or the management expert—by and large men whose interests or talents differ from those of their predecessors. This means a sharp reduction in the flow of new ideas up from below and an attempt to use the topmost level as the idea center. Or, it has been suggested, it may be consistent with the desire of substantial portions of the new group to see some atrophy in the sources of new plans, programs, and action in government. So far the Administration's objectives have been mainly negative, and a different type of personnel may be more suitable to that type of outlook. It seems predictable, however, that when the retrenchment stage runs its course and the realities of responsibility force positive governmental action, the Administration may find its own brand of "egg head" indispensable.

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[7] In December, 1953, in the *Roth* case, a Federal Judge sustained the Justice Department and overruled the Civil Service Commission in deciding that lawyers have no protection in civil service, despite President Truman's declaration, in the order transferring attorney jobs out of civil service to Schedule A, that it would apply only to future lawyer appointees and that it would not disturb the status and job rights of lawyers so long as they remained in the jobs they then held. The ruling of the District Court (District of Columbia) is being appealed to the Supreme Court.

[8] The process of contraction started under the previous Administration. About 51,000 jobs were eliminated during Truman's last seven months, as compared to 105,000 in the first seven months of the Eisenhower regime. The latter figure was in part related to the termination in 1953 of the temporary economic control agencies, such as the Wage Stabilization Board and the Office of Price Stabilization.

The new Administration early encountered the difficulties presented by the veterans preference laws in civil service. It has given evidence that it may seriously grapple with this problem. This is far more important than seems generally realized. Veterans preference is one of the weightiest drags upon the whole administrative structure. Its inflexibilities, its inequities, and its disregard for governmental effectiveness are primary causes of impatience with the entire civil service system and in part account for some of the early attitudes of this Administration as it found that reductions-in-force do not mean that the least efficient can be dismissed. Any honest attempt to deal with the federal personnel issue must grasp this nettle. The President has indicated that he has this intention. It was his personal intervention with the veterans organizations which achieved their assent to the change of law which now requires that veterans must first pass the competitive examinations before their preference points can take effect. If the President can make further progress with the veterans it will be a remarkable achievement.

On the basis of the facts now available, it can be said that the Administration has been surprisingly temperate in its personnel activities, considering the circumstances under which it came to power. There is no substantial evidence, as has been alleged, that there is a movement underway to undermine the merit system. Even as to questionable actions, there is little evidence to support the view that desire for patronage, in the raw sense, has motivated department heads, despite intense pressure from sections of Congress which has not yet abated and which may yet have unhappy consequences. The Eisenhower Administration shows signs of following a conventional cycle. In the early days of a new administration its primary concerns are to gain control of the administrative machinery, and to assure loyalty and confidence. In working for these ends, it finds itself obliged to break through some institutional barriers. As time goes on and a sense of being master in one's own house is achieved, the emphasis may again change to increasing the attractiveness and security of government employment, which means a probable expansion of the merit system. But new administrations even in their earlier days of adjustment rarely revert all the way. The net effect of the advances and retreats is that civil service progress is made, and the merit system appeared to be a sturdier and more accepted institution in the closing months of 1953 than it appeared to be in the analogous period of 1933.

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[9] The Undersecretary of the Interior publicly boasted that he had booted out "a group of Ph.D.'s from Harvard and Columbia" whom he found on his staff. *Washington Post*, Sept. 29, 1953.

IV

Perhaps the most important factor explaining the present attitudes, morale, and effectiveness of government employees is the general environment of repression, suspicion, and contempt for the civil servant which has been building up rapidly and is now prominently pervasive wherever our government is represented, here and abroad. This development, of course, antedates the new Administration. Originally, however, the Administration was in a remarkably good position to take vigorous and effective steps to stop it. It was not to be expected that it would lend comfort to these tendencies and even go so far as to extend the movement within the executive departments themselves. Yet it is hard to recall a time when the prestige of federal employment was at a lower ebb, or to remember when employees were so deliberately cowed through a relentless accumulation of indignities.

The contagious suspicion was symbolized in a memorandum issued in March, 1953 by the Director of the Budget urging all employees to report any behavior of fellow workers that they considered "illegal, improper or detrimental to the interest of the organization." It guaranteed that "in no case will the individual giving the information be embarrassed by disclosure of the source." This brought protests even from the Congress.

The department in which the personnel situation has been most serious is, of course, State. Internal demoralization is evident in both the departmental staff and the Foreign Service. The Secretary has shown considerable distrust of the permanent staff. Widespread concern and resentment developed in the department concerning the extent of authority (now curtailed) conferred on the new security officer. This situation is blamed for the stream of publicity given to the fact that about five persons a week have been fired as security risks, over two-thirds—or one every two days—on grounds of homosexuality. Staff members feel that most of the firings come with insufficient evidence and in any event the publicity is unnecessary and is clearly damaging and offensive to all employees. The morale of the Foreign Service has suffered severely, with varying estimates being made of the extent of damage done to the reporting system from abroad.[10] Certainly continuous "field investigation" of personnel depreciates their standing and effectiveness.

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[10] Five distinguished former American diplomats jointly wrote that "a Foreign Service officer who reports on persons and events to the very best of his ability and who makes

While the situation in State is admittedly extreme, the basic factors are in some degree apparent throughout the government. The Administration has seemed to take the view that its status and prestige would be enhanced in accordance with the number of "security risks" it could find and dismiss from their jobs.[11] It boasted of and exaggerated the number dismissed for such reasons. Partially as a consequence of this mood, what has come to be known as the "daisy-chain" form of "guilt by association" requires sparser and sparser substantiation. The atmosphere is an inordinate pressure for dull conformity, the emergence of "don't stick your neck out" as a basic guiding principle. The result is that even the more conscientious and able administrators who might welcome them are finding it difficult to obtain courageous or inventive suggestions from staff. The latter concentrates on "second guessing" the administrator, so that any new notions will have to come from him. But, in general, the situation prevents him from rising above the level of information and ideas that come from his staff. At a time when the utmost energy, audacity, and ingenuity are required of Americans abroad, it is commonly reported that federal employees at the edge of the Iron Curtain are at low levels of static ineffectiveness due to all-but-complete breakdown in morale.

The demoralization depreciates even the political appointees. While the professional civil servant may be able to retreat into conformity and riskless routine, the higher executives cannot escape the unnecessary and merciless harassment. This condition has discouraged many able executives from accepting government positions, even for relatively short periods.

The threat to the quality and character of the bureaucracy is grave. Milton Mandell has indicated that the JMA program was still bringing into government its fair share of the ablest college graduates, at least through 1952.[12] This runs counter to the more recent experience of almost all college professors with whom I have spoken. Over two years ago, as devoted a friend of government employees as Thurman Arnold asserted: "The day dream of every government employee is that some day he may get an equivalent job in the industry in the affairs of which he becomes a specialist. This specialized training, leading as it

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recommendations which at the time he conscientiously believes to be in the interest of the United States may subsequently find his loyalty and integrity challenged and may even be forced out of the service and discredited forever as a private citizen after many years of distinguished service. A premium therefore has been put upon reporting and upon recommendation which are ambiguously stated or so cautiously set forth as to be deceiving." Letter to the Editor, *New York Times*, Jan. 17, 1954.

[11] In the State of the Union Message it was stated that "Under the standards established for the new employee-security program more than 2,200 employees have been separated from the Federal Government." Neither in this statement nor in an earlier White House announcement of October 22, 1953, when the number was given as 1,456, was any distinction made between loyalty and security cases; thus people who drink too much or talk too freely were lumped with those suspected of disloyalty. No distinction was made between those in sensitive posts and those in routine positions. No mention was made of the fact that many of these employees were temporary and were employed pending completion of their investigations.

[12] "The JMA Program," *Public Administration Review*, Vol. 13, pp. 106–12 (Spring, 1953).

does to industry contacts, is the only reason I can think of why a brilliant college graduate with an opportunity elsewhere should enter civil service."[13] I prefer to think this is a lawyer's hyperbole, but which of the traditional non-material incentives for a civil service career do indeed remain?

V

How should one balance the net effects of the four categories of developments I have discussed? Granting that they are not entirely separable, I regard the formal factors of a protected civil service and tidiness of administrative organization as far less important than the larger political environment and the character of leadership in the executive branch in determining the quality and behavior of the bureaucracy. A career service running up to even the highest administrative levels guarantees nothing but experience. Alone, it cannot assure quality no matter what is done about early recruitment, security, and other material conditions of employment. In a high employment economy, the government must stress non-material rewards to compete successfully for the best people. If these disappear, it is entirely possible that a closed system of early recruitment, planned promotions, and tenure may actually have a retrogressive influence. Formal educational or intelligence quotient requirements will not prove a protection against stagnation. In fact, such provisions may actually promote deterioration by preventing the periodic refurbishing at all levels when political or economic conditions would otherwise make that feasible.

In short, the problem of obtaining and maintaining a vital federal civil service involves far more than the establishment of appropriate procedures and material employment conditions. It is a continuous political problem in the larger sense of the term. The important considerations of civil service rules and regulations must be balanced against the essential conditions of political responsiveness and political purposes. I believe that the President has a professional soldier's respect for an established career service and that this Administration may eventually establish a clean record of strengthening the civil service in accord with purely formalistic criteria. Yet, I would venture that the quality, the role, and the status of federal employment were moving rapidly upward during the days when President Roosevelt was apparently disregarding or even doing violence to civil service criteria, and that they are moving downward today while President Eisenhower is showing a relative respect for them.

In part, this tendency is caused by factors not within the control of the Administration. The federal government undoubtedly acquired an unusually high proportion of the best young talent during the depression years, because business and professional opportunites were scarce and because government was the expanding, exciting, and challenging field at that time. The pendulum now appears to be swinging in the opposite direction towards a lower than normal average talent in new recruits for the federal service due in part to the relative attractiveness of employment opportunities in a full employment economy. But the developments we have discussed will greatly aggravate this tendency and the result is likely to be a severe decline in the quality of personnel in the higher civil service.

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[13] "Bullying the Civil Service," *Atlantic Monthly*, Vol. 188, p. 46 (Sept., 1951).

In addition to these general conclusions, one may raise a few issues, in the form of hypotheses, which in part relate to factors not directly discussed in this paper but which suggest some broader ramifications of this problem:

1. If new administrations are to be expected to accept a broader area of permanent civil service, reaching to the highest levels of administration, it will be necessary for the President's controls and the control of department heads over their bureaucracies to be far stronger and more direct than they are today. So long as this control is lacking it is probably inescapable that Secretaries will seek to substitute for the machinery of effective control by placing trusted and familiar associates in key posts.

2. The need for strong and undiluted executive control over the bureaucracy has been vigorously emphasized in recent years by students of public administration and was, of course, the central theme of the Hoover Commisssion reports. However, the kinds of recommendations contained in such reports for improvement of the mechanics offer only morsels of help in this problem. In the absence of a responsible party system, the President will not have the means to control his bureaucracy, and subordinate officials will find that operational effectiveness requires their developing direct lines to congressional committees and nurturing pressure group constituencies. This places a premium on personal identification with the administration and is thus incompatible with the concept of high level permanent civil service.

3. A part of this situation is the absence of a clear acceptance of the bureaucracy as an instrument of executive responsibility. Congress cannot govern. To the extent that it is permitted to assume the power to manipulate executive personnel it can only disorganize the executive. This too reduces the administration's capacity to accept higher levels of career bureaucracy.

4. In general, texts on civil service principles have talked as if size of government and the number of departments, as well as the nature of the party system, make no difference to the validity of these principles. It should be considered whether or not the level to which the career service can reach effectively may not be related to these factors. May not the sheer size of the American government mean either a proliferation of departments or the assumption by lower key officials within departments of a political role similar to that of department heads, if democratic political control is to be maintained? It does appear that the larger a bureaucracy becomes, the more restricted its head becomes in giving orders. The means built up restrict the ends which can be achieved.

5. A civil service system running to top level posts is not obtained or sustained by law or executive order alone; it must evolve out of tradition based on confidence. Therefore, ingredients for its success must include a period of relative stability in size and function of government admixed with intervening turnover in administration. It must also include an understanding of, and a readiness to accept, the obligations which permanent tenure implies for civil

servants. Government officials must be aware that competitive entry into the government is not enough to constitute a "career system."

6. In this era, the desire of executives to replace key personnel is not, and need not be, primarily motivated by patronage considerations or belief in the spoils system. By and large, public administration literature has tended to underrate the importance and value of the appointive and removal function at the Cabinet level. The appointive and removal function is an important political as well as administrative process if accountability is to be clear. Some foreign experience has indicated that over-contraction of this function can be as dangerous as its excessive use. Similarly, no conception of the civil service ought to oblige a political party to keep a civil servant indefinitely in any particular post. Reasonable protection of the man should not include any presumptive rights to a particular job.

A positive government requires a constant flow of policy invention as well as experience from its administrators. Both can be obtained if policy formulation and action can be kept under the official control of the political officers. In the absence of control, even an administration which appreciates the value of experience may feel driven to foresake this asset to strengthen its sense of control.

7. One of the older clichés about bureaucracies is that in a modern complex society they tend to develop a monopoly of technical competence which gives them a dangerous power of indispensability. This is certainly not true of the American experience. On the other hand, there appears to be inadequate appreciation of some of the advantages of the high turnover rates in American bureaucracy. Relevant and direct experience in the general and particular processes of governmental operations are widely shared by persons outside of the government. Protection of the open door toward lateral entry into the civil service at relatively high levels has values which might be considered parallel to the value of career service in the development of a balanced merit system. The frequent interchange between public and private life has contributed to democratization of the nation through wider citizen understanding of, and participation in, governmental activities. We are fortunate that no social, professional, or traditional barriers exist between the civil service and the private citizen; that so many of the latter have seen it from the inside. In a dynamic economy and in an open society there are other choices than a general "spoils system" or a permanent and "closed group" of civil servants.

8. Given the present repressive environment in government, in which the permanent civil servant is quite understandably inhibited from assuming any avoidable responsibility, decision-making, or initiative, might not the effectiveness of the bureaucracy be enhanced by the addition of more relatively footloose citizens who can afford some effrontery and impudence? This, of course, is tackling the problem from the wrong end; it is the atmosphere of repression which should be done away with. But so long as it remains, is not an administrator justified in considering the need for ballast in the other type of personnel?

REPRESENTATION OF THE REGION IN MISSOURI BASIN ORGANIZATION

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Recently two new and important proposals have been made concerning the character of the needed basin organization for the development and proper utilization of the resources of the Missouri Valley. A Missouri Basin Survey Commission was appointed by President Truman in 1952 to make a "thorough re-evaluation of the whole problem." In its 1953 report this survey group recommended the establishment of a federal Missouri Basin Commission with authority to "direct and coordinate the activities of all federal agencies relating to resource development."[1] In December, 1952 the Missouri River States Committee, composed of the governors of the ten basin states, accepted a Council of State Governments' draft of a federal-interstate compact as the desirable framework for basin organization.[2] Each of these proposals would create a new commission to integrate basin planning and secure coordination among all governmental agencies in the operation of water facilities.

I. THE MISSOURI PROBLEM

At one point in its report the Missouri Basin Survey Commission describes the course of the Missouri as "a crude but large question mark across the surface of one-sixth of the nation" and uses the description to symbolize "the great array of problems which await satisfactory solution in the Basin." Certainly the physical, planning, and policy problems of Missouri Basin conservation and development are difficult enough. What should be the relative priorities in water use and water control in a river basin where there is not enough water to meet all needs but where at times the flow reaches destructive proportions? What is the optimum balance among water uses in a multi-purpose program for the Missouri? What should be the relative role of land management and of large reservoirs and main stem dams? These are only a few in the long list of problems. In some cases a degree of decision has been reached through the construction of facilities[3] or the adoption of a guiding principle.[4] In many instances, however, the issue is clouded with controversy and doubt.[5]

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[1] Missouri Basin Survey Commission, *Missouri: Land and Water* (1953), p. 265. (The Commission's report will be cited hereafter as *MBSC Report.*) Cf. *The Report of the President's Water Resources Commission*, 3 vols. (1950), Vol. 1, pp. 10–11.

[2] Council of State Governments, *Revised Draft, Missouri River Basin Compact* (1953). (Hereafter cited as *Draft Compact.*) See *MBSC Report,* p. 249: "The draft compact was discussed by the [Missouri River States] Committee in its meeting at Omaha, Nebr., on December 1, and was approved unanimously with a few relatively minor changes." The authors acted as consultants to the drafting committee which prepared the compact.

The complexity of these matters and the size and character of the Missouri Basin pose a major problem of formulating effective decision-making machinery in planning and also in integrating operation of facilities. It is widely agreed that the various programs for the valley should be integrated into a single multi-purpose pattern. Land and water management projects in the basin were developed principally by two federal agencies—the Bureau of Reclamation and the Army Engineers. State agencies and political subdivisions also did some work in various phases of conservation and resource management. The difference in the major purposes of the two federal agencies led ultimately to the famous controversy between them. At this point Congress compelled the first step towards integration through the compromise, composite Pick-Sloan plan, which has been the basic framework for present development of the Missouri Basin.[6] In essence, the Pick-Sloan plan represents an effort to secure integration while utilizing existing agencies to administer operations in their respective spheres of responsibility. But the integration is neither comprehensive nor tightly geared. It does not include the Department of Agriculture's program for land management, of which only segments have been authorized by Congress.[7] Nor has the Pick-Sloan plan produced complete cooperation between Reclamation and the Engineers.[8] The state governments of the basin are not included in any organic fashion in the present pattern, and state influence has been exerted only occasionally and indirectly in these intra-federal quarrels. The most striking example of state influence is perhaps the role generally credited to the Missouri River States Committee in the consummation of the Pick-Sloan plan.[9] There has been wide recognition of the need for state cooperation in a comprehensive basin program and much stress has been laid upon consultation with the states.[10] However, the principal federal statutory requirement for such consultation on a major phase of basin development is the provision for state review of water control projects and the transmission of state opinions on these projects in reports to Congress.[11]

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[3] "We recognize one significant difference between the Missouri Basin now and the Tennessee Valley when the Authority was created. Many large projects in the Missouri Basin are constructed or in the process of construction." *MBSC Report*, p. 9. See also *Draft Compact*, p. 1.

[4] The O'Mahoney-Milliken amendment to the Flood Control Act of 1944 gave irrigation priority over navigation, 58 *Stat.* 887. See also the 1945 Rivers and Harbors Act, 59 *Stat.* 10.

[5] "Many unanswered questions concern water use, flood control and conservation. Witnesses before the Commission disputed the effectiveness of watershed treatment in flood control. The data that would enable people to agree on this and to give united support to a comprehensive program do not yet exist." *MBSC Report*, p. 223.

[6] *Report of the President's Water Resources Policy Commission* (1950), Vol. 2, p. 250.

[7] *Missouri River Basin Agricultural Program*, H. Doc. 373, 81st Cong., 1st sess. (1949).

[8] Richard G. Baumhoff, *The Dammed Missouri Valley* (New York, 1951), Chs. 10–12, 14. See also Commission on Organization of the Executive Branch of the Government, *Reorganization of the Department of the Interior* (1949).

[9] "The Committee was instrumental in bringing about the compromise that resulted in the Congressional authorization of the Pick-Sloan plan." *MBSC Report*, p. 249.

[10] *MBSC Report*, Part VIII, Ch. 2.

In recognition of the incomplete nature of the present integration a forum was established to implement coordination around the basic entente of the Pick-Sloan plan. The Missouri Basin Inter-Agency Committee is composed of the Federal Inter-Agency River Basin Committee and the Missouri States Committee.[12] Within the limitations of the present situation, it has played an important role. Lacking in any legal authority and in any direct institutionalized channel to Congress, the Inter-Agency Committee has been concerned more with assembling recommendations of the various federal operating agencies than with integrating these recommendations into a basic pattern.[13]

Until recently the leading remedy proposed for the present difficulties in basin organization has been the establishment of a federal valley authority along the lines of T.V.A. Under this proposal a single basin agency would displace existing federal operating agencies in the operation of a unified multipurpose plan, thereby putting an end to present intra-federal conflicts and rivalries. It is also argued that such an agency would be more regional in character than the present departmental organization. (The agency would be regional in jurisdiction, but national in character, since it would be an agency solely of the national government.) The authority approach has encountered serious opposition in the basin. As the Survey Commission indicates, a valley authority does not seem politically feasible, whatever its intrinsic advantages or disadvantages.[14]

The new proposals of the Missouri Basin Survey Commission and the Council of State Governments both take a middle course and seek integration through planning and coordination, rather than unification, of project operations. The stated objectives of the President's Commission in shaping a coordinating mechanism for the basin represent a definite shift from the authority approach. Two basic objectives are avowed by both new proposals. First, they would coordinate planning and development through a single agency without displacing existing operational agencies.[15] In this connection they also stress the impending need for integration in the operation of water control facilities as the construction stages of many major projects approach completion. Second, they urge the necessity of giving a voice to the region as well as to the nation in basic policy determination. Since the Survey Commission does not translate its general recommendations into specific statutory language, the extent to which the proposed agency might impinge on the functions of existing agencies in the Missouri Basin is difficult to determine with accuracy. However, if we may assume that these uncertainties are to be resolved in a manner consistent with the Commission's stated objectives, the major controversy is not over the powers of the coordinating agency. The real issue is whether an exclusively federal agency created solely by act of Congress or an intergovernmental body established by federal-interstate compact is most likely to accomplish the agreed objectives.

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[11] Sec. 1 (a), 58 *Stat.* 887, 888 (1944). See also *MBSC Report*, pp. 250–51: "Upon completion of all investigations, and prior to submission of survey reports to Congress, the Chief of Engineers and the Secretary of the Interior must submit a copy of their proposed reports to each affected State. The Department of Agriculture by administrative decision follows the same practice. Within 90 days after receipt of the proposed report, the written reviews and recommendations of each State are submitted to the Chief of Engineers or Secretary of the Interior. These comments are attached to the project report which is submitted to Congress." See also *Report of President's Water Resources Policy Commission*, Vol. 3, p. 520. A similar provision requires consultation with the heads of state agencies concerned with wildlife resources. 60 *Stat.* 1080 (1946).

[12] Baumhoff, pp. 169–71.

[13] *MBSC Report*, Part IV, Ch. 8.

[14] *MBSC Report*, p. 9.

[15] While this appears to be the Survey Commission's view, some of the group's suggestions move in a divergent or even a contrary direction. At one point the Commission

II. THE TWO PLANS

The Missouri Basin Survey Commission proposed a federal coordinating agency composed of presidentially selected commissioners, who would have to meet the qualification of residence in the basin "for not less than five years prior to appointment." Under statutory provision, the Missouri Basin governors and interested private groups could recommend the names of prospective commissioners and there would be an advisory committee of the governors. The Commission's offices would be located at some point within the Missouri Basin.[16]

By and large, the powers of the proposed agency would be of a planning and coordinative nature. Other agencies of the federal government would be required to submit their plans for Missouri Basin projects to the Commission for review.[17] The Commission also would do its own comprehensive planning for the basin, would determine whether the plans of other agencies harmonized with its own proposals, and would make reports to the President and Congress containing its recommendations for basin development and management. As an element of local consent, the proposal would provide that "within a 2 year period of Congressional enactment of legislation creating the Commission each state may decline, by legislative action, to consent to the operation of the Com-

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proposes that the new agency operate power transmission lines. *MBSC Report*, p. 232. The new agency would also impinge on the jurisdiction of the Federal Power Commission in at least two important respects: it would have authority to veto FPC grants of licenses for hydroelectric power development projects in the Basin, and it would also be able to review and alter power rates at its own discretion (pp. 265–66).

[16] There would be the usual provisions empowering the Commission to retain a suitable staff and it also would be authorized to borrow or contract for the services of other federal or private personnel.

[17] *MBSC Report*, p. 265. This power of review and recommendation does not extend to any but federal projects. The federal-interstate compact proposed by the Council of State Governments would give the basin agency power to review and make recommendations concerning projects of all governmental agencies and private developments as well. *Draft Compact*, Art. VII, par. 1.

mission in that state."[18] If one or more of the main-stem states of Montana, North Dakota, South Dakota, Nebraska, and Missouri withholds such consent "Congress should determine whether to go ahead with those states that have consented to the Commission."[19]

The proposal put forward by the Council of State Governments is contained in a specific draft of a federal-interstate compact.[20] This agreement would require assent by the seven principal basin states of Montana, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, and Missouri, and by the United States to go into effect. It would also be open to participation on an equal basis by Colorado, Iowa, and Minnesota—states embracing smaller areas of the basin. It would establish a Missouri Basin Commission by means of a compact to which the United States and the Missouri Basin states would be party. This Commission and the one proposed by the survey group would, with some possible exceptions, have similar powers.[21] These powers are summarized by the Council of State Governments as follows:

> "The Commission is charged with (1) formulating over-all plans for the development of the Basin's waters and land resources; (2) reviewing proposed construction and operational plans to determine whether such proposals are consistent with the over-all plans for the Basin's development which the Commission has approved; and (3) reviewing actual operations to determine whether approved plans are being carried out properly."[22]

As regards membership, however, the two agencies would differ markedly. According to the plan advanced by the Council of State Governments, the Missouri Basin Commission would be a joint agency of the federal government and of each of the participating states. Each state would appoint one member of the Commission and the federal government would appoint not less than three nor more than five commissioners.[23] Each of the state commissioners would have one vote on the Commission and the federal commissioners collectively would have a number of votes equal to the total possessed by all the state commissioners present at any meeting of the body. These federal votes would be cast as a unit unless Congress should specifically provide that they be cast in some other manner. In any event, the result would be to give one-half of the voting strength to the states in the basin and the remaining one-half to the federal government. No action of the Commission would be effective or binding unless it received at least three-quarters of the total vote cast.[24]

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[18] *MBSC Report*, p. 8; see also Part VIII, Ch. 3.

[19] *MBSC Report*, p. 9.

[20] *Draft Compact*, pp. 4–11.

[21] See note 15. The meaning of the word "direct" as used by the Survey Commission is also open to varying interpretations because no definition is given. Usually the Survey Commission uses the term in the context of "directing" studies and planning activities. But at one point the term appears in conjunction with the following: "The Commission shall be responsible for carrying out Congressional policies regarding land and water use . . . " and "It shall exercise central control of river operations. . . ." *MBSC Report*, p. 266.

[22] *Draft Compact*, p. 3. All review procedures under the compact are limited to cases of "substantial effect on interstate relations in the use of water." The proposed Commission would have power to "Issue rules and regulations governing the submission of project plans and operations to it and in such rules and regulations may establish principles for determining what constitutes 'substantial effect' . . ." (Art. VII, par. 7).

[23] *Draft Compact*, Art V, par. 1, reads in part: "The Commission shall be composed of one Commissioner from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law, and not less than three nor more than five Commissioners of the United States designated or appointed by the President in accordance with the applicable laws of the United States and serving and subject to removal in accordance with such laws."

III. REPRESENTATION OF THE REGION

Adoption of the Survey Commission plan probably would make a unified and comprehensive plan of federal action in the Missouri Basin possible. The new all-federal agency would have the power to produce such a plan and to keep it current. It would also be able to exclude non-conforming projects and programs of other federal agencies from its own recommendations. Congress could view the federal Missouri Basin program as a whole instead of as a segmented bundle of power dams, flood control reservoirs, gully elimination projects, and irrigation ditches. It would then be in a position to shape legislation in the direction of a coordinated development program.

But the proposed administrative pattern has a serious weakness. It deals with only a part of the problem. As the Survey Commission itself points out, the states are also doing natural resource work. Moreover, the Commission recommends that the states in the future spend considerable money[25] for resource development and management in the basin and that they make important changes in their laws.[26]

Even if the proposed all-federal agency were to succeed in integrating the activities of the Army Engineers, Bureau of Reclamation, Department of Agriculture, and other federal agencies now in the field, it would have no power to secure integration of the ten state programs or of such programs with the federal efforts. An act of Congress would naturally bind federal agencies. It could not bind the states or their agencies.[27] Under the Survey Commission proposal, it seems unlikely that complete integration would take place. For why should state agencies accept and conform to major policy decisions affecting their vital interests if the state governments of which they are part have no responsibility for or voice in the setting of such policies? Why should it be assumed that state legislatures would acquiesce in the recommendations of an outside agency?[28] At most the all-federal agency could be expected to bring about only a partial solution of the problem. On the other hand, a compact is not only state law, but superior state law[29] and the draft proposed by the Council of State Governments would establish a single legal pattern and a single coordinating agency for all the party states and the federal government.

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[24] At least five of the seven principal states and one commissioner representing the United States must be present to constitute a quorum.

[25] During the fiscal year 1953, the ten states in the basin spent $36,666,000 on Missouri Basin development. The Survey Commission indicates that in the coming six years the states will be required to spend an additional $234,445,000. *MBSC Report,* p. 84.

[26] For example, the Survey Commission recommends that the states enact comprehensive land use laws and that they review and alter their water laws. It is further recommended that the new basin agency make proposals from time to time to the states for changes in their laws designed to remove "impediments which the laws of the states present to particular projects or to optimum development in general." *MBSC Report,* pp. 17–18.

[27] Of course the supremacy clause of the Federal Constitution (Art. VI, sec. 2) provides that national laws shall prevail over conflicting state laws. But this is of significance principally where there is conflict of substantive requirements in areas where the national government is exercising one of its delegated powers. The supremacy clause does not apply to the internal organization and administration of state agencies or to the evolution of positive state policies.

Even more serious than its administrative shortcoming is the failure of the Survey Commission's plan to insure the representation of both national and regional interests in the policy-making process. Its agency would be an all-federal body. Consequently there can be no fear that it would lack diligence in protecting and promoting the national interests. But how are the interests of the region to be represented?

Four devices apparently are intended to produce such representation: (1) the states are to decide whether they want the new agency to function within their individual territories; (2) the agency's offices are to be located in the basin; (3) each of the commissioners would have to be a legal resident of the basin for five years preceding his appointment; (4) the Missouri states' governors would form an advisory committee and might, along with any other public or private organizations or individuals, suggest names of prospective commissioners for the consideration of the President. None of these arrangements permits the region to be more than a vocal spectator to its fate.

The proposal to permit state rejection cannot have any real influence on the policy-making activities of the proposed agency. If the Survey Commission's plan is really the answer for the Missouri Basin, all of the states should accept it. Indeed, if a number of them did not, the new agency would be severely handicapped in its work. But once a state had agreed to accept the federal agency, it could not withdraw. This would mean that subsequent to the Missouri Basin agency's birth, the state would have no power of choice and no possibility of using such power to influence the agency's decisions.

From the administrative point of view, there can be little doubt of the wisdom of locating the agency's offices in the valley. Administrative decentralization, however, is no substitute for grass-roots voting power. Osmosis is not the same thing as representation.[30] The reason why state officials reflect regional points of view is that they are responsible to the region's electorate.[31]

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[28] It has been pointed out that the Tennessee Valley Authority has encountered difficulties of this sort. See Philip Selznick, *TVA and the Grass Roots* (Berkeley, 1949), pp. 169–79. Difficulties are much more likely to arise in the Missouri Basin than in the Tennessee Valley, since the former is larger and more diverse. Furthermore, as the Survey Commission itself notes, there is strong sentiment in the Missouri Basin for regional representation in policy formulation.

[29] A state statute which conflicts with a compact is invalid and unenforceable. *Green* v. *Biddle,* 8 Wheat. 1 (1823); *State* v. *Hoofman,* 9 Md. 28 (1856); *President, Managers C.* v. *Trenton City Bridge Company,* 13 N.J. Eq. 46 (1860); *State* v. *Faudre,* 54 W. Va. 122 (1903).

The only Survey Commission recommendations which bear substantial relevance to the problem of regional representation in policy making are those relating to a governors' advisory committee and to the method for choosing the new agency's members. At the present time, the ten state governors in the region participate in the deliberations of the Missouri Basin Inter-Agency Committee. There is no reason to believe that they have less influence here than they would have as members of the proposed advisory committee. In fact, the Inter-Agency Committee is an advisory body. Yet the Survey Commission itself rightly says that Inter-Agency is inadequate because it is a debating society without power to formulate its own policies and secure their acceptance.[32] It is hard to believe that the governors will have any more influence over basic policy as members of the proposed advisory committee than they now have as participants in Inter-Agency. As representatives of their region, the governors at least have the assurance that Inter-Agency provides a platform from which their views can become widely known. Whether an advisory committee would fare as well is a matter of some doubt. It would be only an appendage of a more authoritative agency and not the principal integrating forum. By very definition, such a committee could be only as active as the all-federal agency wanted it to be. This is not representation. At best it is a hearing at the discretion of the federal agency.

The only other mechanism for regional representation suggested by the Survey Commission lies in the manner of selecting the commissioners who would head the proposed federal agency. All of them would have to be residents of the Missouri Basin. This type of requirement has become a familiar one. That it has political appeal is hardly open to question. But how direct the relationship between local residence and faithful representation may be is a moot point.

Finally, the Survey Commission would specifically recognize the right of the Missouri Basin state governors to suggest the names of prospective commissioners to the President for his consideration. The same right would also be expressly extended to any other public or private organizations or to any individuals interested in the basin. This proposal may have some value but at best it is an attempt to give the color of local representation without the substance.

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[30] See *TVA and the Grass Roots* (cited in note 28), Ch.7, pp. 262–66; see also James W. Fesler, *Area and Administration* (University, Alabama, 1949), p. 99: "The Valley Authority as presently conceived and as exemplified in TVA is a wholly federal agency that is hierarchically responsible to a nationally elected President and a national Congress. It is not a joint creature of federal, state and local governments of the area, nor is it responsible, in the literal sense of democratic government, to the people of the valley in which it operates. In legal status, it is as much a part of the federal bureaucracy as the Department of the Interior or the Treasury Department . . . accurate analysis of the Valley Authority therefore cannot be based on a glowing conviction that here is the epitome of grass roots democracy." This statement would apply with equal force to the agency proposed by the Survey Commission.

[31] It is true, of course, that the region's representatives in Congress are also responsible to the region's electorate, but, as the Survey Commission indicates, the objective is a voice for the region at the planning level as exemplified by the proposed agency. See Fesler, p. 143.

[32] *MBSC Report*, p. 85.

IV. THE SURVEY COMMISSION ON COMPACTS

Obviously the compact would give more effective representation to the states of the region than would be possible under the Survey Commission's plan. It would introduce responsible state representatives directly into the policy-making agency instead of permitting them to function from the outside. Nevertheless, the Survey Commission rejected the compact approach by an eight to three vote. It offered seven reasons for its action.[33]

The first objection is a legal one. "We are of the opinion," the report sets forth, "that a compact among a selected group of states and the federal government embarks upon a field largely unexplored in the courts. Certainly an attempt to establish a state-federal compact would raise constitutional questions which would require prolonged litigation for determination." Although the Survey Commission gives this contention first place among its reasons for disapproving the compact approach, the report does not indicate what the constitutional problems may be.

As a matter of fact, the constitutional principles involved are simple and all of them have been passed upon repeatedly by the courts. In 1951 the United States Supreme Court reiterated a settled position when it held a compact to be a contract.[34] It is hardly a novel proposition that the United States government can make contracts with the states. Moreover, there are a number of presently operative intergovernmental agencies created by compact in whose work the federal government participates.[35] Nor is the participation informal in character. It is expressly provided for in the compacts themselves.

Of course, it is also well settled that the contract clause of the United States Constitution does not bind the federal government, but only the states.[36] Depending on one's point of view, this may be urged as a weakness in the compact approach. But if it is, the Survey Commission's plan suffers from an equal infirmity. An all-federal agency would necessarily be created by act of Congress. Accordingly, any alteration in the arrangement or even the abandonment of the entire Missouri Basin program would require no more than another act of Congress amending or repealing the original legislation.

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[33] The views of the Commission majority on the compact approach are stated at pp. 9–11 of the *MBSC Report*.

[34] *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22 (1951). Previous cases on this point are *Green* v. *Biddle*, 8 Wheat. 1 (1823); *Delaware River Joint Toll Bridge Commission* v. *Colburn*, 310 U.S. 419, 427 (1940); *Cotton* v. *Walton-Verona Independent Graded School Dist.*, 295 Ky. 478, 484; 174 S.W. 2d 712, 715 (1943); *Gulf Refining Co.* v. *Stanford*, 202 Miss. 602, 606; 30 S. 2d 516, 518 (1947).

[35] The federal government is represented on the commissions established by the Rio Grande Compact, 53 *Stat.* 785 (1939); Potomac River Compact, 54 *Stat.* 748 (1940); Ohio Valley Water Sanitation Compact, 54 *Stat.* 752 (1940); and the Upper Colorado Basin Compact, 63 *Stat.* 31 (1949).

[36] Westel W. Willoughby, *The Constitutional Law of the United States*, 3 vols. (New York, 1929), Vol. 2, pp. 1253.

In the light of well settled law and practice, there does not seem to be any special reason to fear litigation. But even if some phases of Missouri Basin development do give rise to suits, there is hardly a chance that the litigation could involve the agency. As we have pointed out, the proposed agency, whether established by statute or compact, will be a planning agency. Since the preparation of plans, however vital to resource development and management, does not create or infringe any legal right, who would be able to bring a suit? No person may maintain a legal proceeding unless he has an identifiable legal interest. This is not to suggest that a comprehensive resource program for the Missouri Basin can be carried out without litigation, perhaps a good deal of it. However, such litigation will be occasioned by specific measures of Congress or state legislatures enacting one phase or another of specific conservation and development programs. Litigation of this type will concern the substance of enacted law and will in no degree depend on whether the planning behind the statutes was done by an all-federal agency or by a federal-interstate agency.

The Survey Commission's second argument is that a joint federal-state agency would produce situations wherein personnel responsible to the United States government would be under the direction of state officials. As already indicated, half the voting strength on the Missouri Basin Commission would be in the hands of the federal members. Even if all the states in the region were to present a solid phalanx in opposition to federal wishes, they still could not adopt a policy that lacked the approval of the federal commissioners. Moreover, the compact leaves operational activities in the hands of those agencies now engaged in them. Consequently, it is difficult to conceive of any order that the joint agency could give to any federal officer, other than an order to supply the agency with information in his possession.

The Survey Commission's third and fifth arguments emphasize this fear of state control. It is difficult to deal with them directly because the basic difficulty with the Survey Commission's position is that it mistakenly assumes such state control to be inherent in the compact approach. At one point, however, the Commission's report makes an argument that might have substance under other circumstances: "Prosecution of the national interest has always been the primary responsibility of the National Government. It is doubtful if any other governmental level or unit could successfully adjust diverse and oftentimes conflicting state and sectional interests and articulate those interests with national needs." If the proposed Missouri Basin Commission were to be a builder of projects, this might be a weakness. In a planning agency it is reasonable to expect occasional controversies to remain unsolved for periods of time. In view of the importance of the national interest, it may be fitting that national representation should be able to block any action not in accord with the views of the United States government. Similarly, in view of the importance of the region's interest, it would seem appropriate that the opposition of a considerable number of basin states should be able to compel further consideration of any proposal.

The fourth point made by the Survey Commission is the fact that the federal government will probably spend about seventy per cent of the money ultimately needed for Missouri Basin development projects. This may indeed be a good reason why the United States should have a strong voice in the proposed agency, and it is one of the reasons for the strong voting position proposed for the federal government in the compact. However, it is also fair to point out that the thirty per cent of total expenditures which the Survey Commission expects the region to shoulder should entitle it to something more substantial than an advisory committee. The people of the region have the same interest in the Missouri development as residents of Maine, Florida, or California. But they have also the additional interest that comes from being personally affected. Whatever is done in the Missouri Basin will alter the physical characteristics and economic value of their homes, their farms, their mines, and their factories.

While the Survey Commission constantly reiterates that the national interest can be appropriately represented only by the federal government, it seems to believe that state interests do not have to be represented by the state governments. Its sixth objection to the compact method is set forth as follows:

> The proponents of the compact device have made much of the popular demand for local participation in the development of the basin. They contend that this demand would be satisfied by a Governor's representative on the basin agency. We believe that resource development involves issues outside the normal scope of State activity and in some areas, deals with problems which the States have never been able to solve. We believe that the people, through their local districts, associations and organizations, wish to speak for themselves. They have a better understanding of those issues and problems and should have the opportunity to take a more active part in the development program.

The Survey Commission apparently contends that private pressure groups ("associations and organizations") and special districts are more representative of regional interests than the state governments in the basin. In the absence of specific proof, this assertion is difficult to accept. Moreover, the quoted passage makes the rather arbitrary assumption that we can have either state participation or the expression of private views, but that we cannot have both. The proposed compact insures both by giving the states representation in the agency and by requiring the agency to hold public hearings.

Still another point made in the quoted passage is that many of the problems of resource development on the Missouri lie outside the scope of normal state activity and have not been successfully handled by state governments in the past. This is quite true. It is also true that the same charge can be leveled against the federal government with equal justice. Indeed, the inability of the federal government to formulate and execute a satisfactory plan for the Missouri Basin is the very circumstance that prompted the Survey Commission to propose a new agency. Since, as the survey group repeatedly points out, both federal and state governments will have major responsibilities for the region's development, it would seem only logical that their efforts should be joint in character and that any new administrative organization should reflect this fact.

Finally, the Survey Commission is afraid that the compact will not be able to produce a satisfactory system of voting on the Missouri Basin agency. The report says:

> The determination of this matter is subject to negotiation between the States and the Federal Government, but it involves the all-important question of determining the weight to be given to the Federal as contrasted with the States' interest in the development of the basin. This determination, in terms of voting power, would not be simple, and the process of negotiation could easily be snagged on this issue.

The process of negotiating a voting formula is much further along than this statement indicates. The proposed compact contains the specific voting arrangement already described in this article. The principal question raised in the Missouri States Committee was whether the federal representatives should vote as a unit and it was decided that this was a federal matter to be determined by Congress. Accordingly, it would seem overly pessimistic to discount the possibility of agreement.

In urging their plan in preference to a federal-interstate compact, the majority of the Commission argues that the compact involves such difficult questions that it will take many years to secure adoption by the state legislatures and Congress. In view of the need for reconciling the many divergent interests in the basin, it is likely that any proposal for solution of the difficult problem of basin organization will require considerable time to achieve acceptance. This is clearly evidenced by the long history of the Missouri controversy. It is difficult to see how the Commission's plan will gain any great time over the compact. First, the plan has yet to be put into specific statutory language. The formulation of such legislation will itself involve an extended process of negotiation, drafting, and debate. Second, the provision for state rejection contained in the Commission's proposal means that five state legislatures must be persuaded not to vitiate the plan by denying the new agency permission to function in their respective jurisdictions. True, the survey body's proposal only requires acquiescence by five main stem states in order to activate the basin agency, and it provides that if one or more of these states rejects the proposal Congress can determine whether to go ahead with the states that are willing. Are five states enough, let alone a smaller number?[37] The Commission minority favors the compact with its requirement for participation by seven states. They point out that the partial coverage of the Commission's plan would violate one of the guiding principles adopted by the survey body: "The program should be comprehensive for the basin as a whole and for all its land and water resources." The minority regard this possibility of a fragmented pattern of state acquiescence as unworkable. They point out that "In some States the Bureau of Reclamation, the Corps of Engineers, and other agencies would be operating through the majority's proposed commission. In other States the agencies would operate independently and without coordination."[38]

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[37] As has been noted, the compact requires assent by seven states. A table contained in the report of the Survey Commission shows 50% of Kansas and 76% of Wyoming as lying within the Missouri Basin. Participation by these states is required in the compact plan, but not in the Commission proposal. *MBSC Report*, p. 84, Table 1.

One of the most surprising contentions advanced by the Commission majority is that "If a compact is negotiated the Missouri Basin states may well find themselves involved in a very real 'superstate' that they can neither alter nor control." After all, the states will be directly represented in the proposed compact commission. Elsewhere the majority alleges that the compact proposal "places maximum control of resource development in the hands of the 10 basin States." The authors regard this contention as equally exaggerated, but in any event the two statements are difficult to reconcile. Once the states have acquiesced in the proposal of the survey group they have no representation, much less control, in the proposed basin agency.

The Survey Commission's observation that the compact lacks flexibility is not supported by the draft of the proposed instrument. The compact contains a clause permitting supplementary agreements on a wide variety of subjects among some or all of the party governments, including the United States.[39] Although such agreements cannot violate the basic principles of the original compact, they can be utilized to meet additional needs in all or any part of the basin as these may develop. It is certainly true that a compact among states is binding. But the states are no less bound by the Commission's proposal once they have acquiesced in its operation within their territory, and they are then bound without voice. Moreover, it should be remembered that the party governments can always withdraw from a compact by mutual consent.

All through its report, the Missouri Basin Survey Commission stresses the need for greater state participation in regional development in the Missouri Basin. For example, it says:

> It is possible that the States may be isolated from the initial planning phase wherein the pattern of the region's development is set, and yet may participate in the project or detail planning of the means whereby the plan is to become reality. In a political or institu-

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[38] *MBSC Report*, pp. 13, 14.

[39] "Any two or more of the participating states who by legislative action enter into supplementary agreements for the regulation and abatement of pollution may designate the Commission to act as a joint agency for this purpose. Any two or more of the member governments who by legislative action or constitutional authority enter into supplementary agreements for the development, management and maintenance of joint forests, preserves, parks or recreational areas or facilities, or for the development, use and management of water and related natural resources in addition to that provided by this compact may designate the Commission to act as a joint agency for any of these purposes. Except in those cases where all member governments join in such designation, the representatives in the Commission of any group of such designating governments shall constitute a separate section of the Commission for the performance of the function or functions so designated and with such voting rights for these purposes as may be stipulated in such agreement; provided that, if any additional expense is involved, the member governments so acting shall appropriate the necessary funds for this purpose." *Draft Compact*, Art. XI.

> tional sense, the 10 basin States constitute, in combination, the Missouri River Basin, and as such they should by all means participate in the planning and determination of the goals of basin development.[40]

Yet the majority report rejects the most essential element in encouraging state action by its failure to grant a degree of state responsibility in the consideration and formulation of policy and program in the valley. This failure to provide for regional representation, through the natural media for such regional representation—the state governments—is the most fundamental difference between the Survey Commission proposal and that of the Council of State Governments. The vital elements of the proposed compact are that it provides for representation of both the nation and the region and that it establishes the basic framework for regional organization in a single document accepted by both the national government and the governments of the basin states and open to further development in the region or any area thereof as need arises. This instrument would meet the need recognized by the Survey Commission when it remarks: "In a regional development program, the States and their political subdivisions must assume an active and responsible role, for they are integral units in the broad institutional framework of regional resource development." In fact, the compact method with its provision for regional representation could be used as the legal framework for any of the several mechanisms that have been proposed for the organization of the Missouri Valley.

As the Survey Commission indicates, rapid action may prove undesirable in the Missouri Basin with its difficult and controversial problems and conflicting interests. A democratic procedure with representation of both the national and regional interests is essential, although at times it is both slow and laborious. The coordinating machinery which would be established by the proposed compact furnishes such a procedure, whatever functions are assigned to that machinery. The Survey Commission's plan does not, however much it may make obeisance at the shrine.

[40] *MBSC Report*, p. 248.

LEGISLATIVE POLITICS IN CONNECTICUT

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Although there is a voluminous literature on the organization and procedure of state legislatures, material on their politics is relatively sparse. The classic work of A. Lawrence Lowell, now more than a half-century old, still appears to be the chief reliance of scholars in the field.[1] Lowell's thesis was that parties were relatively insignificant in state legislatures; virtually the whole of the subsequent literature agrees with this.[2] In the case of the Connecticut legislature, it would seem that parties, far from being relatively insignificant, play a dominating role.[3]

I. THE EXTENT OF PARTY POWER IN THE CONNECTICUT GENERAL ASSEMBLY

The study of party influence in a legislature necessitates a two-level approach: analysis of the role of the party leadership and of the voting behavior of the party membership. Several questions must be answered with regard to the party leadership. Are the party leaders an identifiable and cohesive group? Do they develop a definite program for legislative consideration? Is their authority shared with factional leaders capable of frequent disruption of the party program? Are committee chairmen or party leaders in the stronger position for actually forming legislative policy? Do pressure group leaders work through the formal party leaders or do they attempt to build *ad hoc* legislative majorities for their bills through independent action? Can the majority party leaders put desired legislation through the legislature with reasonable certainty?

Objective answers to each of these questions indicate great strength in the

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[1] "The Influence of Party Upon Legislation in England and America," *Annual Report of the American Historical Association, 1901*, Vol. 1, pp. 321–543.

[2] In a recent survey of legislative politics, Professor O. Douglas Weeks reported that his findings "in general substantiate the statement of Luce that 'everywhere except in New York there is much less partisanship than is commonly supposed' and that 'leadership is rarely now and in our time rarely has been a matter of party control'." See his "Politics in the Legislatures," *National Municipal Review*, Vol. 41, pp. 80–86, at p. 80 (Feb., 1952). William J. Keefe corroborates Weeks' views with regard to Illinois in his "Party Government and Lawmaking in the Illinois General Assembly," *Northwestern University Law Review*, Vol. 47, pp. 55–71 (March–April, 1952). Reports on New York and New Jersey, however, suggest that party has considerable influence in the legislatures of those states. See Warren Moscow, *Politics in the Empire State* (New York, 1948) and Dayton D. McKean, "A State Legislature and Group Pressures," *Annals of the American Academy of Political and Social Science*, Vol. 179, pp. 124–30 (May, 1935). The latter, speaking of New Jersey, comments (at p. 127): "If a group is wise, it goes to the party leaders and not to the members of the committee in charge of the bill. The committee will almost always follow the advice of the leaders. . . . Party control of legislation is therefore much more stringent than in Congress."

[3] After looking over materials suggesting the absence of party control in other states a former Connecticut legislator expressed surprise and commented: "I had always supposed they did things the way we do."

Connecticut General Assembly party leadership. Leadership on both sides of the aisle in both houses tends to be highly unified and cohesive. Normally this leadership consists of the state chairman of the party, the governor, a few chosen but powerful outside party leaders (e.g., heads of large city machines and heads of county organizations), and intra-legislative leaders such as the speaker of the House, the president pro tempore of the Senate, the majority and minority leaders, and the chairmen of the most important committees. Choices of these intra-legislative leaders, while formally made through election by the representatives and senators of the party in question, are in reality made by the state chairman and the governor. Assuming equal ability and backing, the chairman of the party *not* holding the governorship is *relatively* more powerful than his opposite number in the other party (by reason, of course, of the absence of gubernatorial competition), although his *real* power is obviously less, since he does not have the patronage and authority of the governorship to back him up. Ordinarily, however, his "suggestions" are enough to assure the selection of approved intra-legislative leaders.

During sessions of the General Assembly the "outside" party leaders are in daily attendance at the capitol and can be seen in corridor conferences with the great and small alike. Each party chairman sits in on his respective party policy conferences and not infrequently he is the real leader of the conference. With few exceptions the men who reach the party pinnacle of the state chairmanship can expect (and they certainly receive) proper deference from their fellows in the legislature, and, significantly, most party chairmen in recent years have been men of considerable experience in the General Assembly. Since about half the legislators of any given session are serving their first terms—with all the confusion that this usually implies—the experience and prestige of the party chairmen are important factors.

The leaders of both parties develop definite party legislative programs covering almost every important issue of state-wide significance, although this does not cover the whole area of potential policy enactments by any means. There is some competition in the formulation and carrying out of this program, of course, as factional leaders in both parties do not always share the relatively uniform views of the leadership on all matters, but these factional leaders are definitely of secondary importance to the party leaders. On occasion factional leaders can effect compromises on certain issues, but instances of outright rebellion are rare and cases of successful rebellion rarer still. Committee chairmen, carefully chosen by the leaders (and not on the basis of a seniority rule), are in a subordinate position; they are contributors to the party program, not successful competitors of the leaders in policy formation. Virtually without exception, pressure group leaders endeavor to win over the party leaders rather than the membership at large.[4] There is some pressure group effort to "educate" General Assembly members through letters and circulars and conversation, but

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[4] One pressure group representative told the writer that it was useless to ask even committee chairmen to take specific actions, for the inevitable question from the legislator was "What does the boss say about this?"

TABLE I. AVERAGE INDICES OF COHESION* ON ROLL CALLS IN THE CONNECTICUT GENERAL ASSEMBLY: 1931–1951

Year	No. of Votes		Senate Indices		House Indices	
	Senate	House	Dem.	Repub.	Dem.	Repub.
1931	21	18	95.0	98.6	80.8	90.8
1933	88	17	75.1	96.9	91.5	76.1
1935	53	22	81.7	89.8	89.4	81.5
1937	18	13	83.0	81.0	88.0	80.2
1939	49	11	78.6	64.3	91.8	84.3
1941	14	10	66.0	78.2	80.9	76.6
1943	30	17	88.4	88.6	86.8	80.0
1945	10	14	89.9	79.2	87.3	84.0
1947	22	8	90.3	86.2	83.9	77.3
1949	35	14	88.4	79.2	99.7	99.0
1951	8	4	100.0	96.0	52.1	74.5

* The index of cohesion is a measure of the degree of party unity devised by Stuart Rice. See his *Quantitative Methods in Politics* (New York, 1928), p. 209. Rice's formula indicates not only that a certain proportion of the party voted together but also the exact degree to which the party was effectively unified. By first determining the percentage of the party which voted either way on a roll call it is possible to calculate the deviation between absolute cohesion (or unanimity) for an index of 100, and complete disunity (with a 50–50 split) for an index of 0. In other words, a group of 100 persons who voted 75–25 on an issue would have an index of 50, not 75, since their deviation from complete unity is not one-quarter but one-half. The figures used in the table are averages of the several indices of the votes of the session, and therefore provide a fair test of the overall degree of party effectiveness during the session. All record votes for the eleven sessions were used with the exception of 116 marathon votes in the Senate at the opening of the 1935 session, when the major parties were seeking the support of the Socialists who held the balance of power. To have included these would have needlessly inflated the overall percentages for regularity. Unanimous votes are included, though they are infrequent. Special sessions are excluded.

usually this is an effort more to get to the party leaders by indirect means than to build up a majority from the membership contrary to the wishes of the leadership.

Does the voting on roll calls in the General Assembly reflect the attitudes and activities of the leadership? Do the party members vote as a unit when the chips are down and important issues come up for a vote? Or do they freely cross party lines and form factional groups voting with the leadership today and against it tomorrow? As the data in Table I indicate, each party sticks together with a high degree of consistency.

Unlike several other states (e.g., New York and Illinois), Connecticut has no constitutional requirement that every bill be passed by roll-call vote. As a result, there are fewer roll calls than is the case under the mandatory system, but roll calls when used are less likely to be perfunctory gestures and more apt to be tests of strength either within or between the parties. Consequently the high indices of cohesion of Table I are all the more striking. Note that at the very lowest point for the Senate the average index of cohesion was 64.3 and for the House 52.1—in other words over 75 per cent of the party voted together during their "worst" sessions. The rule, however, is very different from these exceptions, as these averages of all annual indices show:

	Senate	House
Republicans	86.2	82.9
Democrats	82.5	86.7

During one session (1951) no Democratic senator cast a single vote in opposition to his party colleagues.

Unanimous roll calls yield an index of cohesion of 100 for each party. If the average indices included a large number of unanimous roll calls, the high indices would merely indicate concurrence among all legislators rather than the existence of highly disciplined party groups. In fact, only 7.3 per cent of the Senate votes and only 3.3 per cent of the House votes were unanimous. In the Senate, majorities of the two parties were on opposite sides of the question 83.5 per cent of the time and in the House 80.7 per cent. The data in Table II, showing the frequency distribution of the indices of cohesion, further illustrate the consistency of party solidarity.

Unfortunately there are few similar studies with which the Connecticut data can be compared, but where data are available the contrast is striking. A recent analysis of the Illinois General Assembly, for example, which used a different method for computing party cohesion, presents a sharply contrasting pic-

TABLE II. DISTRIBUTION OF ROLL CALLS, CONNECTICUT GENERAL ASSEMBLY, 1931–1951, ACCORDING TO INDEX OF COHESION OF PARTY GROUPS IN SENATE AND HOUSE

Index of Cohesion	House				Senate			
	Democratic		Republican		Democratic		Republican	
	No.	%	No.	%	No.	%	No.	%
90–100	112	75.6	83	56.0	190	54.5	234	67.2
80–89.9	12	8.1	25	16.9	25	7.2	39	11.1
70–79.9	4	2.7	11	7.4	22	6.3	22	6.3
60–69.9	8	5.4	8	5.4	54	15.5	9	2.6
50–59.9	4	2.7	5	3.4	15	4.3	9	2.6
40–49.9	4	2.7	2	1.3	11	3.2	7	2.1
30–39.9	0	.0	3	2.1	6	1.8	14	4.0
20–29.9	1	.7	10	6.8	15	4.3	5	1.4
10–19.9	3	2.1	0	.0	3	.9	7	2.1
0–09.9	0	.0	1	.7	7	2.1	2	.6
	148	100.0	148	100.0	348	100.0	348	100.0

ture of the role of party.[5] In his Illinois study, William Keefe employs a variation of the "party vote" formula used by Lowell; that is, he calculates the number of roll-call votes "in which 80 per cent or more of one party voted on one side of the question while 80 per cent or more of the other party voted the opposite position."[6] By this means he found that during the two sessions the percentage of party voting never exceeded 4.4 per cent, whereas similar calculations for Connectict show that party voting percentages often went as high as 90 per cent and rarely below 50 per cent.[7]

A caveat must be entered, however, about these data. The index of cohesion is a more reliable indicator of party unity than the "party vote" method, and yet either can be misleading. Such statistics conceal the issue behind the roll call; in one sense lumping all votes together is like discussing units of variable volume. One does not speak of a thousand units of wheat where a mixture of grains, bushels, and carloads is involved. In the case of roll-call voting, some votes will be on matters of no consequence to the party; on these the party leaders make no effort to line up their forces. On other votes, highly important matters of policy may be involved, and the leaders may be pushing every member to conform. A party split in the latter type of vote is by no means equivalent to a split in the former type.

Still, corroborating evidence indicates strongly that these average indices for Connecticut do not greatly exaggerate the level of party consistency in matters of general significance to the state. Indeed, for some years the average *understates* the case, since the leadership during these years never lost control on any significant roll call, although some members may have voted contrary to the party position, either because they were given permission to do so (for local constituency reasons) or because (in a very few cases) they were independent enough not to care about the attitudes of their leaders. The effectiveness of the House majority leadership (which except for three sessions in the 1870's has been Republican since the Civil War) demonstrates the point. In the period

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[5] Keefe, "Party Government and Lawmaking in the Illinois General Assembly" (cited in note 2).

[6] *Ibid.*, p. 58.

[7] Congress presents another striking contrast. V. O. Key, Jr. in his *Southern Politics in State and Nation* (New York, 1949) studied congressional roll calls in both houses and found (p. 370) that for the sessions studied during the 1930's and 1940's the Senate and House had the following "proportion of roll calls on which each [party] registered an index of cohesion of 70 or more (an equivalent of an affirmative or negative vote of 85 per cent or more of the group)":

	Senate	House
Republicans	32.4%	53.8%
Democrats	21.6	43.6

Compare this with data similarly calculated for the Connecticut General Assembly for the period 1931–1951:

	Senate	House
Republicans	85.4%	79.7%
Democrats	68.7	85.1

1931–1951 there were four sessions (1931, 1939, 1945, 1949) when the Republican leadership never once failed to push through any bill put to a record-vote test; yet the average indices of cohesion in these four sessions show something less than perfect consistency. During these years the will of the leadership prevailed on every single vote of significance to the party, and this does not mean party and patronage matters alone, but matters of general social and economic policy as well.

The effectiveness of the Republican leadership in the House is also shown by examination of the bills which they *could not* get through the House. Between 1931 and 1951 there were 148 roll-call votes in the House, and of all these (if we exclude for the moment bills on which the party did not exert pressure—women jury service, birth control, gambling and horse racing) there were only seven bills on which the Republican leaders either needed Democratic help (one bill) or failed to carry enough Republican votes to win. One of these losses was erased after a day's effort by the leaders to bring their people into line. There was then a net total of 6 losses out of 148 possibilities. Equally indicative is this fact: of these 148 roll calls there were but 26 on which there was a divergence of more than 10 per cent of the Republican membership from the position taken by their leaders.

We are often assured that in the state legislatures the party's influence in matters of purely party concern—e.g., patronage—may be high, but that the party only infrequently musters its strength on matters of broad governmental policy. During the two decades under study, however, the greatest dissension was caused not by broad policy issues but by matters of concern to the party organization *qua* organization. At least 9 of the 26 issues noted above (on which there was significant party cleavage among House Republicans) were concerned with general patronage matters, specific appointments, or other intra-party squabbles. The remaining bills were labor and agriculture bills and two proposals to change the state legislature—all issues which caused friction between the component segments of the party.

The evidence leads inescapably to the conclusion that the membership of the General Assembly has relinquished to the leadership the power to formulate substantive policy decisions. Yet the formulation of these policies is inevitably a compromise reflecting the different components of the parties. At times, when contentious issues threaten to pull the party apart, the leaders will refrain from pressing the matter to a vote. Groups within the party are thus not powerless when matters of importance to them or their constituencies arise, and yet with all the compromising within and between the parties, the final and almost invariably binding decisions are made by the party leaders themselves, not by isolated leaders of blocs, whether regional, social, or economic.

II. THE BASES OF PARTY CONTROL

Why does party leadership dominate the scene in Connecticut? How have the leaders arrogated to themselves this measure of authority over policy enactments? These are questions not easily answered; however, the following are all contributing factors even though they may fall short of complete explanation.

Party Strength. Organizationally speaking, Connecticut parties are strong. As the only state which has not yet adopted the party primary election, Connecticut finds that the convention method of nomination of state and local officers has helped maintain leadership control of the party organization. While it is true that a primary does not give the voters "control" over a political organization, still the primary introduces an "outside" influence so far as the inner organization is concerned—it establishes a permanent *modus operandi* for factional rebellion, something not readily available under the convention system. As a consequence Connecticut parties tend to be strong at the apex, and, needless to say, the top management of the party concentrates upon the activities of the General Assembly.

Party Competition. In social group behavior it is common for sharp competition between groups to stimulate high levels of cohesion within the groups. The very struggle for power tends to emphasize the need for internal unity. In part, however, this depends upon whether there is a real opportunity for gaining power, and in Connecticut the battle between the two parties is remarkably even. Nearly all state elections over the last two decades have been decided by very small margins. (Of the last 11 gubernatorial elections, 9 have been won by margins no greater than 2 per cent of the total vote cast.) Winning these elections—especially those for the governorship—is important to the party since it means patronage, prestige, and political initiative. General Assembly members—who are, after all, politicians—are anxious for victory at the polls and thus during legislative sessions much corridor talk is concerned with the possible public impact of the party program. In regular caucus meetings (toward the end of the session caucuses meet almost daily), appeals to the members in terms of the next election are not uncommon. Other things being equal, this can have a considerable effect.

Ideological Similarities. There are broad areas of ideological agreement within each of the major parties in Connecticut. This is an important consideration, since obviously the degree to which any group can be held together in their actions will depend upon the area of agreement prevailing within the group. Sharp differences of opinion—such as the existence of conservative Democrats in the congressional Democratic party—naturally make it difficult to present a united front. But in Connecticut there is no group to compare with the Dixiecrats in the Democratic party and no La Follette, Norris, or Morse among the Republicans. The general division of the two parties along urban-rural and suburban lines (Democrats, urban; Republicans, rural and suburban) has tended to produce a cleavage along liberal-conservative lines, which, of course, facilitates the task of the party leaders in getting party unity.[8]

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[8] It is also worth noting that there is little sectional cleavage in the state, since Connecticut is small and does not have any large city dominating the rest of the state as in the case of Massachusetts, Illinois, and New York. Thus, again, the divisions tend to follow party lines, not extraneous factors.

Party Discipline. As a final resort, party leaders in Connecticut will at times discipline legislators either because of factional shifts which cut the ground from under the individual or because of disloyalty to the party program. Discipline can extend to a denial of renomination for the General Assembly and, of course, denial of higher offices on the state level, but in more subtle ways it can make the individual very ill at ease while in the legislature, both through social pressures and through refusal to grant legislative time for pet projects which the legislator wants to enact for his home town. Disciplinary action is not brought against every legislator who happens to step out of line (for some, refusal of renomination would be impossible, since they control the local nominating caucus), but for a good many legislators, and especially the ambitious ones, it remains a fearsome weapon and its ominous existence in the party armory is not easily forgotten.

In view of the widely held notion that parties are of minor influence in the state legislatures, what is the significance of the Connecticut situation? Is it only the exception which proves the rule? Perhaps this is the case, but the writer is not convinced. Even assuming the accuracy of Lowell's description of the legislature *circa* 1900, half a century's political change must be accounted for. The extraordinary degree of party influence in Connecticut suggests the need for further empirical analysis, since what little evidence we have on the contemporary situation is conflicting.

"REFLECTIONS OF A LAW PROFESSOR ON INSTRUCTION AND RESEARCH IN PUBLIC ADMINISTRATION": AN EXCHANGE

Published below is a discussion by Professor Joseph P. Harris of Kenneth Culp Davis' article, "Reflections of a Law Professor on Instruction and Research in Public Administration," which appeared on pages 728–52 of the September, 1953 issue of the REVIEW. Professor Harris' comments are followed by Professor Davis' reply. (ED.)

Teachers of public administration will welcome the challenging and provocative article of Professor Kenneth Culp Davis, "Reflections of a Law Professor on Instruction and Research in Public Administration," which appeared in the September issue of the REVIEW. It is my purpose to reply to some of his criticisms, to agree with him in some regards, and to discuss some of the issues which he raises. I am in entire agreement with him about the merits of the case method in teaching public administration, and I imagine that there would be little disagreement by other teachers of the subject, though as yet the collection and publication of cases suitable for undergraduate instruction has not reached the point where the use of texts of the conventional type may be discontinued. One of the first efforts to prepare and publish cases on public administration was undertaken fifteen years ago by the Committee on Public Administration of the Social Science Research Council when I was a member of its staff, and resulted in three volumes which were published in 1940 and the following years. The Stein collection is a vast improvement over the earlier case studies, and is being widely used, particularly in graduate courses. The cases were produced by the cooperative efforts of teachers of public administration at a number of leading universities.

In most undergraduate courses on public administration, however, I assume that one of the standard texts or books of readings continues to be used, and the Stein collection is used, if at all, only as supplemental readings. Despite Professor Davis' strictures to the contrary, there are a number of excellent texts on the subject, which would compare favorably with texts in other fields, and especial mention should be made of the three outstanding books of readings and materials on public administration—by Lepawsky, Nigro, and Waldo—which have recently appeared.

The method of instruction in public administration is attacked by Professor Davis on the ground that it is "plain exposition in summary form, mostly abstract and general. Problems are almost entirely absent. Even the occasional illustrations tend to be abstract or general" (p. 729). To support this sweeping generalization, he quotes three sentences on the subject of judicial control of administration taken from the text by Professor White, and refers briefly to President Conant's criticisms of the Harvard School of Public Administration in his last report. And yet throughout his article Professor Davis takes writers in the field of public administration to task for making generalizations not based on intensive study of the subject!

The conventional method of instruction in public administration is only partially reflected by the standard texts which are used. As a teacher of the subject over a period of thirty years I would hesitate to venture generalizations about the methods used by others, for unquestionably they vary considerably from one institution to another. I assume that instructors usually assign as supplementary readings materials drawn from an extensive literature on the subject—official reports, studies and surveys of government operations, and many monographs and articles dealing with individual agencies or particular aspects of administration. The Hoover Commission reports, for example, are only one of a series of such reports dealing with the national government; there are many similar studies dealing with state and local government, and many official and unofficial studies of particular agencies or operations. Perhaps if Professor Davis had selected for analysis some of the notable monographic studies of particular aspects of administration published recently by such scholars as Appleby, Buck, Carpenter, Dimock, Emmerich, Fesler, Gaus, Gulick, Graham, Hardin, Huzar, Key, Kingsley, Latham, Lepawsky, Lipson, Maass, Macmahon, Mansfield, McKinley, McConnell, McCamy, Millett, Pritchett, Reining, Simon, Stone, Tead, Waldo, White, and Wilmerding—to mention some of the leading authors in the field—he would have gained quite a different impression of the research and writing on public administration. The generalizations contained in the texts are not pulled out of thin air, but for the most part are based upon an extensive body of careful, detailed, scholarly studies. This is not to say, of course, that we do not need much more intensive research. We are barely on the threshold of a scientific study of public administration.

To illustrate the type of abstract and inaccurate generalizations found in public administration texts, Professor Davis cites the following passage from the work of Professor White: "The foundation of judicial control over administrative acts rests in the Anglo-American doctrine of the rule of law," which is followed by a quotation from Dicey that every official from the Prime Minister down is responsible before the courts. This rule of law, states White, "has been universally accepted." Such a generalization, Professor Davis contends, has little meaning to the student and moreover is quite inaccurate. He then shows how the subject of the responsibility of public officials for their acts could be much better taught by the case method, using as an example a case brought by the owner of a herd of livestock which was killed on the order of an inspector who found them infected with anthrax. Professor Davis makes a cogent argument for the use of the case method, illustrating how the pertinent problems and effects of a rule of law can be raised for discussion, and cites leading American court decisions which have held that public officers are not liable for judicial decisions, whether made by a judge or an administrator. He concludes that Dicey's famous rule, instead of being "universally accepted," has been generally rejected.

In fairness to Professor White, however, several things need to be said. First, the quotation from Dicey is to the effect that public officials of all ranks are subject to the law, and that their acts are reviewable by the courts. The reference to the Prime Minister is, of course, inaccurate with respect to tort actions, but this is so well understood that Professor White can hardly be criticized for failing so to state. (Curiously, the Prime Minister of the Province of Quebec in a recent case was held liable in a tort action.[1]) Second, Professor White was discussing not merely the tort liability of public officers, but the wider topic of judicial review of administrative actions. Third, he discusses at some length the qualifications which have been made of the general principle, as well as the varying practice, concluding with the following words: "As a result, it is practically impossible to state any general conclusion as to the actual extent or limits of court review of official decisions" (p. 577). Moreover, he also discusses the effects of tort liability on administrative actions, and uses the same illustration of the destruction of diseased cattle on the order of a health inspector. This single quotation hardly supports Professor Davis' sweeping condemnation of public administration texts.

Professor Davis is not accurate in his unqualified statement (p. 731) that Dicey's rule of law has been rejected in England and generally rejected in this country. The principle that the acts of public officials are reviewable in courts of law is still good law in both countries, but with important qualifications which Professor White is careful to point out. In England the idea that municipal corporations are not liable for the torts of their officers never took root. Except in the exercise of discretionary powers, the acts of officers of the Crown have also been generally subject to tort actions, and in 1947 an act was passed by Parliament in which the government assumed liability in such cases. The test in British law is whether in the act complained of the officer was acting within his discretionary powers; unless it can be shown that his act was within the discretion delegated to him, it is reviewable in court. It would appear to the writer that Professor White's discussion of the reviewability of administrative acts by the courts, instead of being "misinformation" and seriously in error, is, indeed, a fair statement of the general principle.

Although Professor Davis does not cite evidence to support his sweeping criticism of public administration texts, and the illustration which he gives is not a happy one, there is nevertheless considerable truth in his accusation. That teachers of public administration are also critical of the available teaching materials is indicated by the cooperative effort which has resulted in the Stein collection of cases. Abstract generalizations, which are a common feature of textbooks generally, fail to provide the student with a clear grasp of administrative processes and behavior, and often fail to raise problems and issues with which he must grapple to understand the subject. To some extent this deficiency is met by the instructor, who introduces actual cases and illustrations in order to make generalizations meaningful. Able administrators, however, have complained to the writer that graduates who have taken public administration courses often have quite inaccurate ideas about how actual administration is conducted.

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[1] *Roncarelli* v. *Duplessis*, 1.D.L.R. 680 (1952) (Quebec Superior Ct., 1951).

Many teachers of public administration have been dissatisfied with the emphasis placed in texts on the staff functions of government—personnel, finance, planning, public relations—and with the inadequate treatment of policy preparation and determination and of the impact of politics on administration. The student preparing for an administrative career needs the kind of education which will enable him to assist in the preparation of public policies. This is more important than training in classification or budgeting techniques. It is not easy, however, to prescribe the kinds of instruction which will be of greatest value to the student in preparing him for future assignments dealing with program and policy development. He needs, among other things, an understanding of the legislative process, the role and techniques of pressure groups, and the factors which influence public opinion, and at least some acquaintance with economics, statistics, sociology, and American history. Since almost every act of the public administrator is affected by legislation and by judicial decisions, he needs instruction in constitutional and administrative law. Perhaps most of all he needs to develop skills in analysis and effective writing.

All of this may be summarized by saying that the future administrator needs above all else a broad, liberal education rather than an excess of instruction in administrative techniques and methods. He needs not only to develop an inquiring mind, but also to have his interest in public affairs aroused. The rewards of the public administrator are to be found in human satisfactions derived from participating in significant public programs, rather than in monetary compensation. In this regard public administration texts deserve praise, for they treat the public service as a worthy profession, and not, as often represented, as corrupt and contented. To a considerable extent they indicate standards of desirable practice—"what-to-do"—which Professor Davis significantly suggests should be taught to future lawyers.

Professor Davis criticizes the literature of public administration for relying unduly "upon abstraction and perspective, and not enough upon close investigation"; for studying the forest as "patches of green on the hillsides" instead of concentrating on the trees. As evidence in support of this general criticism, he cites and discusses in some detail the part of the *Report* of the President's Committee on Administrative Management in 1937 which relates to independent regulatory commissions. This part of the *Report* of the President's Committee, it may be noted, occupies three printed pages—hardly an adequate sample of writings on public administration. Furthermore, the *Report* was in no sense a research study, and no one ever asserted that it was. The terms of reference of the President's Committee on Administrative Management in 1936 were quite different from those of the Hoover Commission eleven years later. It did not undertake an intensive study of the numerous departments, commissions, and other agencies of the federal government, nor did it offer specific recommendations concerning needed changes in their organization and administration—a task which it considered beyond its facilities and allotted time. The Committee believed that it would be impracticable to attempt at one time the detailed and intensive studies of the vast federal government which should precede specific changes in organization and procedures. It regarded this job as a continuing one which should be recognized as a function of management, and accordingly recommended that the President and other executive officers of the government be equipped with the necessary staff and with legislative authority to make such studies from year to year, and to put into effect needed improvements under suitable safeguards.

One may disagree with this position of the Committee, which was basic to all of its recommendations, but criticism of it for failure to make intensive research studies, which it never claimed to make, is hardly justified, particularly since it specifically recommended that such studies be made before reorganizations or other changes were put into effect. The Committee had a research staff of about twenty persons for a period of approximately two months. They were specifically instructed not to conduct research studies, but rather to prepare exploratory studies and memoranda concerning areas in which improvement in organization and administration were thought to be needed. In almost all instances they were persons who had already carried on research in the subjects to which they were assigned. Many of the memoranda were subsequently published, though this was not originally intended. A number were excellent studies, but this was possible only because the authors were already familiar with the subject. The total expenditures of the Committee were less than $60,000, which may be compared with an expenditure of several million dollars by the Hoover Commission.

Professor Davis attacks the findings and recommendations of the Committee with regard to independent regulatory commissions as ill-conceived, theoretical, impractical, "naive," and not based on careful study of the actual operations of the commissions. The major recommendation of the Committee concerning independent regulatory commissions was that Congress should stop creating them, for if the recent trend continued it would not be long until there would be fifty or more such commissions, insulated to some extent from executive direction and coordination. In this recommendation the Committee was following a well-beaten path, for many surveys of state government contained similar findings and recommendations. It criticized the delegation of executive functions to such commissions—"duties of administration and policy determination with respect to which they ought to be clearly and effectively responsible to the President"—but recognized that with respect to their judicial functions "they ought to be wholly independent of the Executive" (*Report*, p. 36). Although the Committee made no specific recommendation for the reorganization of individual commissions, it put forward as a "possible solution" a proposal that their administrative functions be separated from their judicial functions, with the former being placed under executive control and the latter remaining independent.

Much of Professor Davis' criticism of the President's Committee *Report* was directed not at the *Report* itself, but rather at certain statements found in the staff study of Professor Robert E. Cushman, which was published later. The staff studies should not be confused with the *Report* of the Committee. It should be noted that Professor Cushman continued his research on the subject, at the suggestion and with the aid of the members of the President's Committee, and in 1941 published a volume, *The Independent Regulatory Commission,* which deals with the experience both in this country and in Great Britain.

Professor Davis asserts that this plan "crumbled" under the scrutiny of congressional committees as soon as the "rudimentary facts about adjudication were brought out," and that Dr. Gulick, testifying for the Committee, could not answer "even the simplest questions about specific application of the broad proposal" (p. 736). This is harsh condemnation of the Committee and its *Report.* Dr. Gulick testified before the Select Committee of the Senate that a careful study of the work of each commission would be necessary before making any attempt to reorganize its activities along the lines suggested by the Committee, and that no single plan could be applied to all commissions—a position entirely consistent with the recommendations of the Committee. Congress was unwilling to grant to the President the authority to reorganize the independent regulatory commissions, but the *Report* of the Committee has evidently had considerable effect in halting the trend to create additional commissions, and when Congress established a new regulatory agency in the field of civilian aviation, it followed, in the main, the recommendation of the Committee. It may be noted that when Congress enacted legislation providing for the regulation of civilian aviation in 1938 (52 *Stat.* 973), it followed, in the main, the plan recommended by the President's Committee. Executive functions were segregated from judicial functions and were placed under an Administrator who was made directly responsible to the President and largely independent of the regulatory body, though placed within the Authority. By the Reorganization Plans of 1940 the Authority, including the Administrator and the members of the regulatory body (now designated as the Civil Aeronautics Board), were placed in the Commerce Department. The principal effect of this change was to place the Administrator under the Secretary of Commerce. The Board retained its independence, which is in conformity with the broad recommendations of the President's Committee.

It is significant that the Hoover Commission, whose studies and *Report* Professor Davis commends, made a similar, though less sweeping recommendation, that executive functions be taken out of the independent commissions and be transferred to the appropriate executive department. The Task Force Report on *Regulatory Commissions* stated: "The very qualities which make these agencies valuable for regulation, especially group deliberation and discussion, make them unsuited for executive and operating activities . . . . Ordinarily, we believe, such operating functions should be placed in the regular departments where they may be carried out under executive supervision and responsibility" (p. 30). And the Commission itself stated in its report on *Regulatory Commissions:* "Purely executive functions too frequently have been entrusted to these independent regulatory commissions. The consequences have not been too happy, for a plural executive is not the best device for the performance of operations duties. Moreover, these duties commonly call for close integration with the broad programs of the executive program" (p. 11).

Throughout his article Professor Davis accuses writers in public administration of using abstract theory and sweeping generalizations without thorough and intensive factual studies. He is particularly critical of the President's Committee on Administrative Management for its statement that the creation of regulatory commissions outside of the executive branch does "violence to the theory of the American Constitution that there should be three major branches of the Government and only three." Where, inquires Professor Davis, is the proof that there should be only three? This statement by the Committee lies outside of the field of public administration; it is rather an interpretation of the spirit of the Constitution. The Committee is entitled to its opinion, and Professor Davis to his, but it is suggested that if he were to pursue his inquiry further he might find more support for the interpretation of the Committee than for his own.

I am entirely in agreement with Professor Davis that intensive research is sorely needed on the actual operations of regulatory commissions and on the broader subject of the regulatory process. It is not always possible, however, to delay recommendations until exhaustive research has been conducted. The recommendations of the Committee concerning independent regulatory commissions and their insistence that further studies should be made before any steps were taken to carry out their proposed plan hardly supports the general statement of Professor Davis that political scientists are prone to accept theory without factual investigation.

I do not care to enter into any controversy with Professor Davis about his charges that public administration texts contain a high degree of misinformation about administrative law, and that the textwriters do not have a basic understanding of the subject. This is not within my special field of competence. My comments relate to the other parts of his article. One constructive result which may come from Professor Davis' article is greater attention to administrative law by teachers of public administration. His excellent suggestions of research topics on the regulatory process indicate his understandable emphasis on this subject, which is closely related to administrative law, but it may be pointed out that this is only one aspect of public administration.

I am in hearty agreement with Professor Davis concerning the importance of instruction in administrative law as a part of the education of future public administrators, but I do not share his views concerning the lack of understanding of the subject by political scientists who offer such courses. I also agree that in this course, as well as in others, the major objective is to impart understanding rather than information. I doubt that there would be any substantial difference of opinion on that score.

It is regrettable that the suggestive and challenging article of Professor Davis, with many major points of which I find myself entirely in accord, is marred by an unduly critical attitude indicated by his attack on certain passages as well as writers in public administration. I wish to dissent also to his thesis that generalization, theory, and abstractions should be postponed until adequate factual foundation has been laid through extensive and intensive studies of policy making. Factual studies unaccompanied by theory, generalizations, hypotheses, will usually be barren of results.

JOSEPH P. HARRIS.

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Professor Harris seems to be either entirely or mostly in agreement with four of the six major propositions asserted in the six sections of my article, and he neither agrees nor disagrees with one of the remaining two sections.

Although his criticism often has the flavor of disagreement, his apparent disagreement often evaporates upon close examination. For instance, in his final paragraph he asserts "dissent" from my view that generalization and theory should be postponed until adequate factual foundation has been laid. He says that "factual studies unaccompanied by theory, generalization, hypothesis, will usually be barren of results." Although he calls his view a "dissent," we both recognize that theory and investigation must interact upon each other. The position taken in my article is this: "Nor do I deny the utility of perspective or of theory, or of hypothesis based upon perspective. But perspective and theory should not be used as a substitute for detailed facts which a little investigation will make available."[1]

Professor Harris expresses "hearty agreement" with my view that greater emphasis should be given to the regulatory process in public administration instruction: "One constructive result which may come from Professor Davis' article is greater attention to administrative law by teachers of public administration." He regards as "excellent" my effort to make constructive suggestions for research on specific political science aspects of the regulatory process. He expresses "entire agreement" with my emphasis upon advantages of the case method of instruction, and he also agrees that that method should not be exclusive. While partly disagreeing, he grants that "there is considerable truth" in my observations concerning undue generalization and abstraction in the texts.

Despite our substantial agreement on such a large portion of the area under discussion, further comment on three questions may be profitable: (1) the incidental point about Dicey's rule of law, (2) the major proposition concerning the President's Committee and independent regulatory agencies, and (3) my section on "Misinformation about Administrative Law," with which Professor Harris expresses neither agreement nor disagreement.

1. Professor Leonard White quotes Dicey for the proposition that "every official, from the Prime Minister down to a constable or a collector of taxes, is

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[1] P. 733.

under the same responsibility for every act done without legal justification as any other citizen." Then White says: "This rule was brought to the United States as a part of the common law heritage and has been universally accepted."[2]

I have asserted that Dicey and White are in error to the extent that "any other citizen" is liable in tort for acts done without justification, but that officials both in England and in the United States are generally immune from tort liability for discretionary acts.[3]

Professor Harris obfuscates the point by demonstrating, as if in opposition to my view, that courts often review administrative action and that the "rule of law" is not wholly rejected.[4] His demonstration is not in opposition to my view; I am hardly unaware of judicial review, as nearly half my book on Administrative Law is devoted to that subject, and I agree that, just as we believe in the vague idea of "justice," we believe in the equally vague idea of "rule of law." But what I have called "Dicey's rule of law," that is, the manner in which Dicey makes the "rule of law" specific, is not and never has been "universally accepted." As Mr. C. E. S. Wade said in the introduction to the ninth edition of Dicey's book, Dicey "seems . . . not sufficiently to have regarded the immunities . . . [of] Crown servants."

Professor Harris concedes my principal point when he acknowledges: "The reference to the Prime Minister is, of course, inaccurate with respect to tort actions, but this is so well understood that Professor White can hardly be criticized for failing so to state." I think few readers, if any, will agree that in a student text a statement that is admittedly "inaccurate" is beyond criticism because the truth may be understood in some quarters.[5]

After acknowledging that the statements of Dicey and White were "inaccurate with respect to tort actions," Professor Harris goes on to insist that Dicey and White provided "a fair statement of the general principle." This is the equivalent of saying that even though officers are not liable in tort, it is a fair statement of the general principle to say that they are liable in tort.

2. Perhaps I am at fault in my criticism of the President's Committee on Administrative Management, for I have not succeeded in getting Professor

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[2] White, *Introduction to the Study of Public Administration*, 3d ed. (New York, 1948), p. 575.

[3] For a collection of authorities, see Davis, *Administrative Law* (St. Paul, 1951), pp. 801–7.

[4] Professor Harris is wrong in assuming "that public officials of all ranks are subject to the law, and that their acts are reviewable by the courts." For a collection of judicial decisions, mostly of the Supreme Court of the United States, concerning administrative action which is not judicially reviewable, see Davis, *Administrative Law*, pp. 812–67.

Professor Harris lumps together tort liability of government and tort liability of officers, as if there were no difference.

[5] Furthermore, Professor Harris misses the crucial fact that Dicey and White were not discussing merely the Prime Minister but "every official, from the Prime Minister down. . . ."

Harris to understand my principal idea. A restatement of my position may therefore be desirable.

The President's Committee proposed to split each regulatory agency into two sections. The Committee (which I have not confused with the staff) said in its *Report*: "The administrative section . . . would be directly responsible to the Secretary . . . . The judicial section . . . would be wholly independent of the department . . . . This proposed plan meets squarely the problems presented by the independent commissions. It creates effective responsibility for the administrative and policy-determining aspects of the regulatory job and, at the same time, guarantees the complete independence and neutrality for that part of the work which must be performed after the manner of a court."[6]

What the Committee called its "proposed plan" was based upon the erroneous assumption that "policy-determining aspects" could be separated from "that part of the work which must be performed after the manner of a court." The error can be more clearly seen in the language of the staff report on which the Committee's report was based: "The Administrative Section must not do judicial work . . . . The Judicial Section must not do policy-determining work."[7] The objective was to subordinate policy-determining work to the Cabinet Officer and the President, and to maintain independence for judicial work.

Now, the idea that the staff, the Committee, and Professor Harris have apparently failed to grasp is that such a separation is intrinsically impossible because of the simple fact that the issues in the cases to be decided by the judicial section are often policy issues. If the Committee or its staff had made a little investigation, it would have discovered that fact. The Senate Committee quickly discovered the error, by calling in some people who understood adjudication.

Quite significant is the fact that at no point in his long discussion of the President's Committee does Professor Harris even attempt to defend the "proposed plan" on its merits.[8]

Professor Harris says that "the major recommendation of the Committee concerning the independent regulatory commissions was that Congress should stop creating them." Yet a page or so later he says that Congress in creating the Civil Aeronautics Authority in 1938 "followed, in the main, the plan recommended by the President's Committee." The 1938 Act, of course, made the CAA independent, and at all times during and after the five executive reorganizations, the regulatory functions of the CAA and CAB have been exercised by an independent agency.[9]

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[6] *Report*, p. 41.

[7] *Report*, p. 230.

[8] Professor Harris says that criticism of the Committee "for failure to make intensive research studies, which it never claimed to make," is unjustified, because the Committee's research staff "were specifically instructed not to conduct research studies." The Committee considered that the *Report* was based upon what the Committee itself at page viii of the printed *Report* called "research studies."

[9] Professor Harris' statements about the 1938 Act creating the CAA are not in accord

Referring to the recommendation of the President's Committee, Professor Harris says that the Hoover Commission "made a similar, though less sweeping recommendation." The Hoover Commission's carefully-considered plan to transfer certain executive functions to the chairman of each agency has nothing in common with the ill-considered plan of the President's Committee to have adjudication conducted by officers who "must not do policy-determining work." And as for what Professor Harris calls "the major recommendation" of the President's Committee—to stop creating independent regulatory commissions—the Hoover Commission said very simply and without qualification: "This Commission believes that the independent regulatory commissions have a proper place in the machinery of our Government. . . ."[10]

Professor Harris tries to defend the view of the President's Committee that "there should be three major branches of the Government and only three." He says that pursuing the inquiry further might lead to more support for the Committee's view than for my view.[11] It might. But Professor Harris ignores the fact that the inquiry has already been pursued much further than the Committee pursued it and that the findings are overwhelmingly adverse to the Committee. The detailed experience concerning coordination of independent agencies with other units of the government is fully set out in the mimeographed monographs prepared for the Hoover Commission's task force on the independent regulatory commissions. The task force, having the detailed experience before it, concluded that the idea of the President's Committee that independence of regulatory agencies impairs coordination is "based mainly on theoretical or doctrinal grounds and not on actual failures of coordination among agencies."[12] If the President's Committee had followed the method of these monographs—that of systematic and detailed factual investigation—many of its basic conclusions would have been radically different.

3. Professor Harris neither approves nor disapproves the section of my

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with the Act, which is printed at pages 973–1030 of volume 52 of the United States *Statutes at Large*. For instance, he says that the Administrator was "made directly responsible to the President and largely independent of the regulatory body, though placed within the Authority." His statement is inconsistent with many provisions, including §§201(b), 204(a), 206, 302(c), 305, and 308. For instance, §206: "The Authority shall make an annual report to the Congress. . . ." The only requirement for a report by the Administrator is §308, which provides: "The Administrator shall exercise . . . such powers and duties . . . as may, from time to time, be assigned to him by the Authority. . . . The Authority may request the Administrator to make reports to it of his work under this Act."

[10] The Hoover Commission *Report* (New York, 1949), p. 429.

[11] If, as Professor Harris says, the question is one of "interpretation of the spirit of the Constitution," his position has no support in any Supreme Court opinion, and scores of Supreme Court decisions are against him.

[12] Task Force Report on Regulatory Commissions, pp. 25–26 (1949). It is regrettable that the monographs of the task force have not been printed and that only a limited number were mimeographed, for the literature of political science suffers for want of the information contained in them.

article entitled "Misinformation about Administrative Law." That section may be the most important. I fear that the extreme severity of my criticism may lead casual readers wrongly to assume that my assertions are largely hyperbole. Furthermore, some of the misinformation has been so much repeated in political science literature, one writer citing another, that many readers may be reluctant to believe that it is misinformation.

I hope that political scientists who write about administrative law will carefully examine each of my thirty or forty specific illustrations of misinformation, together with the explanation and documentation, and will reflect upon the reasons that may explain the extent of the misinformation.

KENNETH CULP DAVIS.

University of Minnesota.

Editor's note: Within the limits of space available, the REVIEW will be glad to publish a limited number of letters or comments relating to the section of Professor Davis' article to which he invites attention in the last two paragraphs of his reply to Professor Harris' discussion.

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BIBLIOGRAPHICAL ARTICLES

SURVEY OF BACKGROUND MATERIAL FOR THE STUDY OF THE GOVERNMENT OF EAST AFRICA

In the political experiment now taking place in East Africa, an attempt is being made to construct a multiracial political community from vastly different and heterogeneous peoples. The experiment, still in its early and formative stages, provides an opportunity to observe at first hand the creation of institutions and the development of attitudes and ideas for establishing a political community—or political communities, as is now the case. In the process, new institutions have been created, sometimes at a rapid pace, while at the same time some of the old tribal institutions have shown a remarkable ability to resist change and to project themselves into modern times with little or no modification. Political ideas imported from Europe and America in the West and from India in the East have influenced the political behavior of Africans, and of Europeans and Indians also; some reactions have been sympathetic while others have been hostile, as in the nativistic uprising of the Mau Mau. With all of the reality of the Mau Mau terror and of the nostrums of political agitators, there is, nevertheless, a vast amount of good will in East Africa, with people there who are willing to teach as well as to learn, to exercise restraint in the awkward manifestations of cultural conflict, and to develop a common pride in a common country.

This bibliography has been prepared to assist students in political science, and other social sciences as well, in securing an understanding of government in East Africa. The bibliographic sources in the United States are considerable, especially in official documentation, but there is a certain unbalance resulting from the paucity of Indian and Arab material and from the relatively meager sources on African social and political institutions. The compilers of the bibliography have been forced to be most eclectic in their selection of sources, for there are few systematic analyses of the area, and little uniformity in the use of concepts. We have drawn on memoirs of travelers and of residents, the monographs of anthropologists, the official records of governmental authorities, and special studies of particular topics in the area.

I. SURVEYS

For a reader interested in a general background of Africa, Lord Hailey's *An African Survey* (Oxford University Press, London, 1938) is unsurpassed. This useful volume is now being revised, and a new edition should be ready shortly. The *Survey* was prepared as an aid in determining the extent to which modern knowledge was being applied in meeting the problems of African development, and as such it is a well-written compendium of information on geography, ethnology, languages, population, political and social objectives, law and justice, native administration, non-European communities, problems of taxation, conditions of labor, agriculture, health, education, and economic development.

The geography of Africa plays such a large part in shaping the social institutions that a general knowledge of it is requisite for all research on Africa.

Walter Fitzgerald's *Africa, A Social, Economic, and Political Geography of Its Major Regions* (Dutton, New York, 7th ed., 1949), is a widely used, non-inspiring introduction to the area, containing a general description of the mineral resources, soils, transportation, and agricultural and economic development. The book is marred by the injection of Fitzgerald's numerous opinions and untested theories on sundry topics, but one may as well take the warning here that much of the writing on Africa has a bias. A revised edition is being prepared by Robert Steel of the School of Geography, Oxford. A more recent geographic treatise by L. Dudley Stamp, *Africa, A Study in Tropical Development* (John Wiley and Sons, New York, 1953), considers the geographical environment for human activity and the responses of various segments of the African population to that environment. It is lucidly written and gives a vast amount of essential background information. The recent volume prepared by a study group of the South African Institute of International Affairs, *Africa South of the Sahara*, edited by Anne Welsh (Oxford University Press, London, 1952), is less detailed. It is concerned with such topics as the physical background of Africa, the population and political framework, agricultural production, economic development, and communications, but it is uneven and incomplete, with a South African orientation. An excellent general introduction to the problems of tropical African resources may be found in the recent work of Pierre Gourou, *Tropical World* (Longmans, Green and Co., London, 1953).

Pictures of African life and of the African landscape are of considerable value in giving a clue to the nature of the land and the people. Although many books have their illustrations, *Focus on Africa*, by Richard U. and Mary Light (American Geographical Society, New York, 1941), has perhaps the most vivid ones. This records the flight in a private plane from Cape Town to Egypt, and there are many aerial photographs of East African scenes. These photographs illustrate in a dramatic fashion the physical layout of African settlement, the effects of soil erosion, and other features of the mainland territories, and there are some inspiring pictures of Kilimanjaro and Ruwenzori. The commentary is entertaining, if not penetrating, and there are factual accounts culled from standard sources.

A general knowledge of the various tribal groupings of East Africa is not easy to come by, for the groups and subgroups are numbered in the hundreds, and there is no good, general ethnographic source for the area. Diedrich Westermann's volume, *The African Today and Tomorrow* (Oxford University Press, London, 3d ed., 1949), is, however, an excellent introduction to the peoples of Africa. *East African Background*, by G. W. B. Huntingford and C. R. V. Bell (Longmans, Green and Co., London, 1950), was written initially for members of the armed forces in East Africa and has since been revised. It is a rewarding volume, giving an outline of the main features of African tribal life and a brief description of the East African tribes. Studies of individual tribal groups are continually being made; some of these are mentioned subsequently in the section on political and legal systems.

The surveys of East Africa proper have been made primarily by the journalist-traveler, and some of these writings are of a high standard. Mrs. Elspeth

Huxley, Kenya-born, has written widely of East Africa, and her book, *The Sorcerer's Apprentice; A Journey through East Africa* (Chatto and Windus, London, 1948), is an arresting account of development and change in East Africa. Mrs. Huxley makes some salty comments, which are not everywhere appreciated, but she has a sharp eye, a broad background of knowledge, and a lively pen which give force to her writing. The most recent commentary has been written by Mona Macmillan, *Introducing East Africa* (Faber and Faber, Ltd., London, 1952); her observations on people, politics, and geography are an excellent introduction for a person unfamiliar with the area. Karen Blixen (Isak Dinesen) has told the story of her life on a Kenya coffee farm in *Out of Africa* (Random House, New York, 1938; Modern Library, 1952). This delightful volume, told with warmth and charm, is recommended as one of the finest pieces of literary writing on the East African scene.

The best single source on Uganda is the work by H. B. Thomas and Robert Scott, *Uganda* (Oxford University Press, London, 1935, 1949), which is both historical and descriptive and contains an excellent annotated bibliography of value for historical research. There is no comparable volume published for Kenya, Tanganyika, or Zanzibar. However, the small brochure published by the Colonial Office, *The British Territories in East and Central Africa, 1945–1950* (Cmd. 7987/1950), is a useful compendium of the developments in the two areas since the war; and one can find an assortment of facts, both useful and extraneous, in *Year Book and Guide to East Africa, 1953*, published by the Union Castle Line (Robert Hale, Ltd., London, 1952).

II. HISTORICAL

A knowledge of East African history is of considerable value in understanding the present, and there are a number of excellent works on European and Arab contact with Africa which supply this need in part. The internal history of Africa has been indifferently developed, but plans are being considered for historians and archaeologists to combine their talents in common research on the topic. As for pre-history, the writings of L. S. B. Leakey are outstanding. The Arabs were in contact with Zanzibar and the coastal areas of what is now Kenya and Tanganyika for several centuries before the Europeans arrived in the fifteenth century. Sir Reginald Coupland, the British historian, has written the authoritative account of this early period in *East Africa and Its Invaders, from the Earliest Times to the Death of Seyyid Said in 1856* (The Clarendon Press, Oxford, 1938). The subsequent period is covered in his volume, *The Exploitation of East Africa, 1856–1890; the Slave Trade and the Scramble* (Faber and Faber, Ltd., London, 1939). A first rate historical work, by Raymond Leslie Buell, is *The Native Problem in Africa* (The Macmillan Co., New York, 1928, 2 vols.). Although outmoded in some parts, this is still a fruitful source of information and contains some 400 pages on East Africa.

European interest in the interior of East Africa paralleled the exploits of the great explorers of the nineteenth century—missionaries, traders and administrators, and individuals in search of adventure. Ludwig Krapf, a German Lutheran working under the aegis of the British Church Missionary Society, has left us an interesting journal of his life as one of the first missionaries in East Africa: *Travels, Researches, and Missionary Labours, during an Eighteen Years' Residence in East Africa* (Trubner and Co., London, 1860). The volume gives one of the earliest accounts of the social and political organization of East African tribes, and is additionally interesting because of the adventures of Krapf and his colleagues, Rebmann and Erhardt, in discovering Mount Kilimanjaro and Mount Kenya. The diary of John Speke, *Journal of the Discovery of the Source of the Nile* (Harper and Bros., New York, 1864), is a revealing account of Speke's map-less travels through Tanganyika and Uganda in search of the headwaters of the Nile. Speke's description of the social and political organization of the Baganda and other major tribes in Uganda is among the earliest European writings on the people of this area.

The exploits of Henry M. Stanley were outstanding by any standard, and this sturdy explorer was instrumental in shaping the future political development of East Africa. Stanley's first volume, *How I Found Livingstone; Travels, Adventures and Discovery in Central Africa* (Harper and Bros., New York, 1872), manages to give an impression of the character of these two remarkable men whose lives became so strangely linked. Stanley's second African exploration is told in the volume, *Through the Dark Continent, or The Sources of the Nile, Around the Great Lakes of Equatorial Africa, and Down the Livingstone River to the Atlantic Ocean* (Harper and Bros., New York, 1878, 2 vols.). This is more than an amazing adventure story of a brave, autocratic, and resourceful explorer. Stanley's visit to Uganda and his successful appeal for missionaries to come to this area influenced the subsequent development of the region. A third adventure, described in the volume, *In Darkest Africa; or The Quest, Rescue and Retreat of Emin, Governor of Equatoria* (Harper and Bros., New York, 1890, 2 vols.), is an incredible story of politics, jungles, high adventure, and unbelievable personal fortitude. This episode also had political ramifications, and the British shortly thereafter declared a protectorate over Uganda. The story of the German Emin Pasha relief expedition is told by its commander, Dr. Carl Peters, in the volume bearing the preposterous title, *New Light on Dark Africa*, translated by H. W. Dulcken (Ward, Lock and Co., London, 1891). Stanley's journals have been edited by his wife, Dorothy Stanley, in the volume, *The Autobiography of Sir Henry Morton Stanley* (Houghton Mifflin Co., Boston, 1909). The discoveries of Livingstone are less significant for East Africa than for the areas to the south, although parts of Tanganyika were included in his orbit of discovery. See especially *The Last Journals of David Livingstone in Central Africa* (John Murray, London, 1874, 2 vols.).

A convenient anthology of African exploration has been compiled by Margery Perham and J. Simmons from the letters and diaries of eleven British explorers of tropical Africa in *African Discovery: An Anthology of Exploration* (Faber and Faber, Ltd., London, 1942). The anthology includes accounts of the journeys of Speke, Stanley, Livingstone, and Sir Samuel Baker, who discovered Lake Albert and was instrumental in breaking up the slave trade in northern Uganda. An unusual account of one of the most fabulous of the Arab explorers and slave-traders has been recorded by Heinrich Brode, *Tippoo Tib, the Story of His*

Career in Central Africa, translated by H. Havelock (Edward Arnold, London, 1907). The rapacious Tippoo Tib tells of his search for ivory and slaves in what is now Tanganyika and of his associations with Livingstone and Stanley.

The missionaries arrived early in East Africa, and they have played a significant part in its development. One of the best general studies of the role played by the missions is the recent work of Roland Oliver, *The Missionary Factor in East Africa* (Longmans, Green and Co., London, 1952). Many missionaries have left vivid records of their African experiences, but their writings on various tribal groups have frequently been outmoded by time and by later, more rigorous, methodological studies.

Of the early European administrators, one of the most gifted was Sir Harry H. Johnston, who had remarkably developed talents in several fields, an inquiring and disciplined mind, and a facility in recording his materials. Johnston wrote widely, and an indication of the scope of his competence and interest may be seen in the following title of one of his works, *The Uganda Protectorate: an Attempt to Give Some Description of the Physical Geography, Botany, Zoology, Anthropology, Languages and History of the Territories under British Protection in East Central Africa* . . . (Hutchinson and Co., London, 1902, 2 vols.). There are many excellent and rewarding works on this early period which will not be cited here, including those by Lugard, Jackson, Thomson, and Tucker.

III. AFRICAN POLITICAL AND LEGAL SYSTEMS

Detailed studies of pre-European African political systems have been undertaken largely by anthropologists or administrators and less systematic studies by missionaries, traders, travelers, and other persons in the field. For the most part, analyses of political institutions have been subordinated to other interests, and there has been little uniformity in vocabulary, concepts, or methods. An attempt to arrive at some significant generalizations on African political organization has been made by eight anthropologists, whose case studies appear in *African Political Systems,* edited by Meyer Fortes and E. E. Evans-Pritchard (Oxford University Press, London, 1940). The introduction stands as one of the best political essays on comparative politics in the literature.

The cases fall into broad groups. The first group, which includes K. Oberg's study of the Banyankole of Uganda, exhibits well-defined political structures with administrative machinery, judicial institutions, and centralized authority having a monopoly over the use of force. In these tribes there are cleavages of wealth, privilege, and status which correspond to the distribution of power and authority. The second group, which includes the Bantu Kavirondo of Kenya as described by Gunther Wagner, reveals the lack of well-defined political structures and sharp social cleavages. In these societies the lineage and clan system and the age-set system perform political as well as social functions. In the absence of chiefs, the use of force is diffused among the various units of the tribe.

East Africa possesses fewer examples than West Africa of well-integrated kingdoms and empires, and of those which have been studied practically all are in Uganda. In addition to Oberg's account of the Kingdom of Ankole, included in the above-mentioned case study, there is an earlier ethnography by John

Roscoe, *The Banyankole* (The University Press, Cambridge, Eng., 1923). Roscoe spent over twenty-five years in Africa as a missionary, and although his study of the Banyankole is considered by some anthropologists to be incomplete and inexact, his description of the two ethnically distinct classes, the ruling Bahima and the serf Bairu, is more detailed than the Oberg study. Roscoe's *The Bakitara or Banyoro* (The University Press, Cambridge, Eng., 1923) provides a description of another group in Uganda which possesses a well-defined political system with a hierarchy operating under a king.

The Baganda have received greater attention than either of the groups mentioned above. Roscoe's study, *The Baganda: An Account of Their Native Customs and Beliefs* (Macmillan and Co., London, 1911), is mainly concerned with the social and religious life of this people in the pre-European period. A subsequent study by Sir Apolo Kagwa, *The Customs of the Baganda*, translated by Ernest B. Kalibala and edited by M. M. Edel in *Columbia University Contributions to Anthropology*, Vol. 22 (Columbia University Press, New York, 1934), represents an attempt on the part of Roscoe's chief informant to extend and correct the earlier work of Roscoe. Sir Apolo, as former prime minister and regent of Buganda, was uniquely qualified to discuss the elaborate political hierarchy, the land system, and the social structure of his people.

As for the category of tribes which lack well-defined political institutions, reference has already been made to the writings of Gunther Wagner. His longer work, *The Bantu of North Kavirondo* (Oxford University Press, London, 1949), considers such elements as kinship structure, magico-religious beliefs and practices, and the rites which carry out important political functions for tribes lacking chiefs, tribunals, and tribal councils. Another ethnography which includes significant political data is that of Monica Hunter Wilson, *Good Company: a Study of Nyakyusa Age-Villages* (Oxford University Press, London 1951). This describes a field study of a tribe in southwest Tanganyika in which political functions are performed by a combination of the age-sets and the kinship system. Although certain methods for maintaining order are regularized among the Nyakyusa age-villages, well-defined centralized authority is absent.

Among the Kikuyu and the Kamba, two of the largest tribes of Kenya, the system of institutionalized age-set of elders was formerly the core of the political system, with the elders, organized into councils, arbitrating disputes and exercising religious functions. Chiefs, as such, did not exist. This system, based on territorial districts, was supplemented by the kinship structure which cut across the territorial units. Many conflicts were resolved by the clan or, when more than one clan was involved, by a system of blood feuds and compensations.

John Middleton's *The Kikuyu and the Kamba of Kenya*, Ethnographic Survey of Africa, Vol. 2, Part 5 (International African Institute, London, 1953), surveys the various studies which have been made of the Kikuyu and the Kamba, notes the areas of agreement among the scholars, and gives a precise account of the political and economic structures of the groups. Jomo Kenyatta has written of his own people in the volume, *Facing Mount Kenya: The Tribal Life of Gikuyu*

[Kikuyu] (Secker and Warburg, London, 1938). The volume has the trappings of Western scholarship, including an introduction by Professor Malinowski, but it is highly subjective. The novel on the Kikuyu by Mrs. Elspeth Huxley, *Red Strangers* (Harper and Bros., London, 1939), draws on authoritative sources and authentic incidents to present what is in effect a social description of the Kikuyu at the time of the coming of the white man.

Comparatively little has been written about the Masai, a cattle-herding people who have resisted European acculturation and, with their domains protected, have retained a great deal of their traditional social structure. An early work by A. C. Hollis, *The Masai: Their Language and Folklore* (The Clarendon Press, Oxford, 1905), is still useful. Among the Masai, the age-set system also performs many political functions, a description of which is contained in the article by Henry Fosbrooke, "An Administrative Survey of the Masai Social System," *Tanganyika Notes and Records* (No. 26, Dec., 1948). The Turkana in northwest Kenya also have a social structure based on the kinship and age-set system, an account of which has been written by P. H. Gulliver, *A Preliminary Survey of the Turkana* (University of Cape Town, Cape Town, Communications from the School of African Studies, New Series No. 26, 1951). This study describes the character of political leadership, the nature of Turkana law and justice, and the manner in which the judicial system has been altered by the British administration. Another type of political order is found among the Lango, which has been studied by Jack H. Driberg, *The Lango, A Nilotic Tribe of Uganda* (T. F. Unwin, Ltd., London, 1923). Prior to European rule, the Lango lived an almost anarchic existence. They lacked a settled tribal authority and were divided into a number of factions, unrelated to the clan system, which rarely cooperated with one another. The social organization was directed primarily toward military exploits. Other studies of the social structure of East African tribal groups include A. C. Hollis, *The Nandi, Their Language and Folklore* (The Clarendon Press, Oxford, 1909); G. W. B. Huntingford, *The Nandi of Kenya, Tribal Control in a Pastoral Society* (Routledge and Kegan Paul, London, 1953); Thomas T. S. Hayley, *The Anatomy of Lango Religion and Groups* (The University Press, Cambridge, Eng., 1947); and Jean G. Peristiany, *The Social Institutions of the Kipsigis* (G. Routledge and Sons, Ltd., London, 1939).

It may be necessary to supplement the two major classifications of African political systems suggested by Fortes and Evans-Pritchard. In introducing indirect rule, British administrators have run into special problems where there is no cohesion among or centralized control over various subtribal groups but where they, in turn, possess chiefs, councils, and other well-defined political institutions. These groups are largely found in Tanganyika. The Chagga, who formerly were an aggregate of small units living on the slopes of Mt. Kilimanjaro, have recently been transformed into a unified tribe under an elected Paramount Chief, T. L. M. Marealle. In the article, "The Wachagga of Kilimanjaro," *Tanganyika Notes and Records* (No. 32, Jan., 1952), Chief Marealle discusses the wars and other changes which have helped unite the 400 clans into sixteen chiefdoms. Another source is *Kilimanjaro and Its People* (H. F. and G. Witherby, London, 1924), by Charles C. F. Dundas.

The Sukuma, who number over a million, were formerly composed of small autonomous village units or federations of village chiefs, and they too have been federated recently. Hans Cory, who might be called the founding father of the Sukumaland Federation, has written *The Ntemi, the Traditional Rites in Connection with the Burial, Election, Enthronement and Magic Powers of a Sukuma Chief* (Macmillan and Co., London, 1951), an incisive study which reveals the manner in which the political authority of the chief is supported by his control over agriculture, warfare, and the religious system.

The systematic study of native legal systems has not proceeded very far, and the pertinent material is to be found largely in oral tradition and institutional practice rather than in written works. The *Journal of African Administration* has frequent articles on native law, and the magazine is acutely aware of the importance of the subject. One of the best accounts of African courts is the volume by Arthur Phillips, *Report on Native Tribunals* (Government Printer, Nairobi, 1945), which, in describing the various practices, reveals the great diversity which exists. The study by Hans Cory and M. M. Hartnoll, *Customary Law of the Haya Tribe* (P. Lund, Humphries and Co., Ltd., London, 1945), is a codification of customary law undertaken to assist local government tribunals in attaining greater uniformity in their decisions. Another study by Hans Cory, *Sukuma Law and Custom* (Oxford University Press, London, 1953), was prepared to assist the judicial integration of the new Sukumaland Federation. D. J. Penwill has a less inclusive study in *Kamba Customary Law; Notes Taken in the Machakos District of Kenya Colony* (Macmillan and Co., London, 1951).

IV. ADMINISTRATION

The administrative structure of East Africa is a complicated mosaic of power relations. Each of the three mainland territories has its own governor, civil service, legislative council, commissioners for the provinces and districts (with some variations in function and title), and aggregates of local authorities varying from indigenous kingships to modern urban communities. The East Africa High Commission provides some services in common for the three territories. Zanzibar is different, having a Sultan and a Resident. Internally, the pattern of government is not consistent; in parts of Uganda, for instance, various tribal authorities have varying degrees of protection and autonomy granted by treaty.

All of these varying structures have been described by that wise and energetic Africanist, Lord Hailey, in his authoritative survey, *Native Administration in the British African Territories* (London: H.M.S.O., 1950–53, 5 vols.). Kenya, Uganda, and Tanganyika are described in Part I, East Africa; Zanzibar in Part II, Central Africa; and there is a general survey of the system of native administration in Part IV. The study is more concerned with the structure of the institutions than with the dynamics of the political process, but it is nevertheless a remarkable contribution to our knowledge of African government. The supplements to the *Journal of African Administration* for April and July, 1952, entitled "A Survey of Local Government in the African Territories since 1947," provide additional information not covered in the Hailey volumes.

All responsible administrative officials are faced with the policy question of whether to protect, utilize, and develop existing political institutions, or to create new institutions more suitable for passing an annual budget than for carrying on cattle raids. The issue, generally posed as that of direct rule as opposed to indirect rule, has an important bearing on the future development, and the rate of development, of Africa; and the preservation of native authority is variously frowned on and supported by emerging, educated Africans. Lord Lugard is given credit for creating the system of indirect rule when he worked among the Fulani Emirates of Northern Nigeria, and his experience is recorded in the noted work, *The Dual Mandate in British Tropical Africa* (William Blackwood and Sons, Edinburgh, 1922). In addition to describing the operation of indirect rule, Lugard gives one of the first comprehensive surveys of some of the problems facing colonial administrators in Africa, such as education, labor, taxation, slavery, land tenure, and economic development.

Sir Donald Cameron, the former Governor of Tanganyika, was keen on developing native political institutions, and his administration gave an impetus to a search for and revival of these. But in Tanganyika, as in other parts of East Africa, the tribal structure is different from that of Northern Nigeria, and there are numerous small, truncated groups without a well-developed political structure. Cameron's position, as outlined in an informal address, "Native Administration in Nigeria and Tanganyika," has been reprinted as a supplement to Vol. 36, *Journal of the Royal African Society* (Nov. 30, 1937). This address is an analysis of the purposes and results of indirect rule and of the limitations of its applicability to a territory which has many diverse tribes and political systems. The article by R. E. Robinson in the July, 1950 issue of the *Journal of African Administration*, "Why 'Indirect Rule' Has Been Replaced by 'Local Government' in the Nomenclature of British Native Administration," is an informative account of the development of local authority and of the changing attitudes regarding it. Miss Lucy P. Mair has also written of indirect rule, and in her *Native Policies in Africa* (G. Routledge and Sons, Ltd., London, 1936) she compares British policies with those of France, Belgium, and Portugal. Another comparative study has been made by H. A. Wieschoff, *Colonial Policies in Africa*, African Handbooks No. 5 (University of Pennsylvania Press, Philadelphia, 1944.)

The development of local government in East Africa has proceeded rapidly in recent years, but neither the rate of growth nor the patterns of response have been uniform. Indeed, if one is interested in political development in East Africa at the present time, there is no more dynamic area than in the broad field of local government. The most recent work on the current status of local government in Uganda is by C. A. G. Wallis, *Report of an Inquiry into African Local Government in the Protectorate of Uganda* (Government Printer, Entebbe, 1953). Many plans are in the wind for developing local government authorities in Tanganyika. An account of these plans has been prepared by Professor W. J. M. Mackenzie of Manchester University under the title *Report of the Special Commissioner Appointed to Examine Matters Arising out of the Report of the Committee on Constitutional Development* (Government Printer, Dar Es Salaam, 1953). For background, a useful reference is a memorandum written by the Member for Local Government setting out in abbreviated form the main patterns of development in the various districts of Tanganyika. The report, *Development of African Local Government in Tanganyika* (Col. No. 277/1951), surveys the establishment of rural and urban councils, the development of local fiscal policies, the tendency to separate judicial and executive functions in local government, the problem of the integration of small tribal units, and the association of the popular elements of tribal life with the traditional rulers in the tasks of local government.

The *Journal of African Administration* has published a number of reports on experiments in developing local government authorities, and this excellent magazine is well worth following for anyone interested in the subject. As an example of the type of material it includes, the article by F. A. Montague and F. H. Page-Jones, "Some Difficulties in the Democratization of Native Authorities in Tanganyika" (Vol. 3, Jan., 1951), reviews the extent to which democratic procedures have evolved in African societies without the aid of European administrators. It also cites cases where it has been necessary for British administrators to encourage popular participation in local government affairs, a situation resulting from lethargy on the part of the nontraditional elements or from autocratic tendencies of various Native Authorities. An interesting story of the use of anthropological material in framing a better system of indirect rule is contained in the volume by G. Gordon Brown and A. McD. Bruce Hutt, *Anthropology in Action: An Experiment in the Iringa District of the Iringa Province, Tanganyika Territory* (Oxford University Press, London, 1935). See also H. E. Lambert, *The Use of Indigenous Authorities in Tribal Administration* (Meru of Kenya) (University of Cape Town, Cape Town, Communications from the School of African Studies, New Series No. 16, 1947.)

There are relatively few published studies of urban areas in East Africa, but additional field studies are either under way or completed, and the results will no doubt be published in due time. Edwin S. Munger, a geographer, has written *Relational Patterns of Kampala, Uganda* (University of Chicago Press, Chicago, 1951), which examines the impact of the physical environment, the cultural patterns, and the economic position of Kampala. A few years ago the Nairobi Municipal Council employed a three-man team to prepare a twenty-five year development plan of the physical, economic, and social resources of the city. The report by L. W. T. White, Leo Silberman, and P. R. Anderson, *Nairobi, Master Plan for a Colonial Capital* (H.M.S.O., London, 1948), contains an excellent survey of the existing conditions in Nairobi, although it is inadequate as a plan for a multiracial city. Reference to the Maragua Development Plan for a multiracial community, proposed by Richard Hughes, is made in *East Africa and Rhodesia*, Aug. 27, 1953.

V. RACE, POLITICS, AND CULTURAL CHANGE

The arrival in Africa of Europeans and Indians has created new political situations, and the Europeans, in particular, have introduced their own political traditions, including the organization of political parties. When Sir Winston Churchill visited East Africa in 1908, there were fewer than a thousand Europeans living in Nairobi, but Churchill recorded that "every white man in Nairobi is a politician; and most of them are leaders of parties." (*My African Journey*, Hodder and Stoughton, London, 1908, p. 21.)

The political issues surrounding white settlement have been discussed for half a century, and they were the subject of an interesting exchange of letters between Elspeth Huxley and Margery Perham in the volume, *Race and Politics in Kenya* (Faber and Faber, Ltd., London, 1944). Mrs. Huxley asks what policies the critics of European settlement would recommend, and Miss Perham attempts to present some solutions. The introduction by Lord Lugard contains a compact summary of the official documentation on the land problem, East African federation, and other Kenya controversies.

Mrs. Huxley has also written two informative volumes on the history of the white settlers. *White Man's Country: Lord Delamere and the Making of Kenya* (Macmillan and Co., London, 1935, 2 vols.) is a first-rate biography of the pioneer, Lord Delamere, who was primarily responsible for making Kenya an attractive area of European settlement. Delamere's experimentation with crops and animals suitable for the East African terrain is a fascinating story. *Settlers of Kenya* (Longmans, Green and Co., London, 1948) is a short, readable account of the history of white settlement in Kenya. An informative and well-documented study of British policy in Kenya is the work of Marjorie R. Dilley, *British Policy in Kenya Colony* (T. Nelson and Sons, New York, 1937).

A number of commissions have from time to time studied land usage in East Africa, and the Lugard introduction in the Huxley-Perham volume is a convenient guide to this rather extensive literature. The document, *Land and Population in East Africa* (Col. No. 290/1952), contains an exchange of correspondence between Oliver Lyttleton, the Secretary of State for the Colonies, and Sir Philip E. Mitchell, the recent Governor of Kenya, on the background of the current disturbances in Kenya; an appendix includes the frame of reference for the recently appointed Royal Commission. Another useful reference is H. E. Lambert, *The Systems of Land Tenure in the Kikuyu Land Unit* (University of Cape Town, Cape Town, Communications from the School of African Studies, New Series No. 22, 1950).

A number of works on East Africa are critical, emotional, and heavily biased. Some of these have been influential in shaping the stereotypes of East Africa, and of Kenya in particular, held by many people in the world outside. Among the works in this category are the writings of Norman Leys and W. Macgregor Ross and various publications of the Colonial Bureau of the Fabian Society.

The position of the Indians is always a factor in East African politics, but no systematic study has been made of this important group. The historic statement of British policy was made in the command paper, *Indians in Kenya* (Cmd. 1922/1923), which rejected the proposal for barring Indian immigration and announced the policy of the paramountcy of African interests. Since the partition of India and Pakistan, the sedulous interest of these two countries in East Africa seems to have increased. The first volume of W. K. Hancock's *Survey of British Commonwealth Affairs* (Oxford University Press, London, 1937–1942, 2 vols.) contains a chapter on the position of Indians in Kenya and South Africa in the interwar years.

Constitutional change has flourished in East Africa since the war, and on the territorial level the persistent issues are the relative number of Africans, Europeans, and Asians in the central legislature, the ratio of elected and of appointed members, and the relative number of official and unofficial members. Martin Wight has compiled the British colonial constitutions and written a long introductory essay in the volume, *British Colonial Constitutions, 1947* (The Clarendon Press, Oxford, 1952). Wight's earlier work, *The Development of the Legislative Council* (Faber and Faber, Ltd., London 1946), gives some essential background for the understanding of the political structure of the territories.

African political activity generally follows the structure of the local government concerned, and there are few territory-wide organizations. Even the Kenya African Union, now proscribed, was primarily confined to the Kikuyu tribe. Political controversy in local government units can be followed in the vernacular press, but it is pointless to list such publications here. *The Report of the Commission of Inquiry into the Disturbances in Uganda during April 1949* (Government Printer, Entebbe, 1950) summarizes the attitudes of the various political factions—they can hardly be called parties—extant in the Kingdom of Buganda and the unresolved political issues between Buganda Africans and Indians.

Parts of Africa are changing, and this creates new and different political problems. A general theory of cultural contact and social change is contained in the classic work of Bronislaw Malinowski, *The Dynamics of Culture Change; An Inquiry into Race Relations in Africa*, edited by Phyllis Kaberry (Yale University Press, New Haven, 1945). Malinowski suggests that change be studied under the following categories: the interests, influences, and institutions of the impinging culture; the surviving forms of the African traditions; and the processes of contact and change. The volume by Jack H. Driberg, *The East African Problem* (Williams and Norgate, Ltd., London, 1930), describes the Hamitic invasions of Uganda, Ruanda, and Tanganyika, and contrasts the varying reactions in the Ankole, Buganda, and Bunyoro areas.

A study by Godfrey Wilson and Monica Hunter Wilson, *The Analysis of Social Change, Based on Observations in Central Africa* (The University Press, Cambridge, Eng., 1945), analyzes the changes taking place in the native groups of East and Central African societies as a result of European contact. The groups studied exhibit a variety of reactions in shifting from the parochial village, with its well-defined status positions, to the wider circle of Western culture. The Wilsons feel that the greatest threat to social equilibrium has come from the lag resulting from advances in the material culture and the retention of the indigenous religious beliefs. In *An African People in the Twentieth Century* (G. Routledge and Sons, Ltd., London, 1934), Lucy P. Mair describes the effect of European contact upon the village life of the Baganda. Colonial policy is analyzed in terms of its impact upon the indigenous social and political institutions and of the implications of the policy of indirect rule.

L. S. B. Leakey, the archeologist and curator of the Coryndon Museum in Nairobi, has written a small, succinct, and enlightening volume, *Mau Mau and the Kikuyu* (Methuen, London, 1953), which is required reading for anyone interested in the current unrest in Kenya. The volume is a brief summary of a larger, as yet unpublished, study of the social and religious customs of the Kikuyu. Leakey describes the breakdown of the Kikuyu social system under European impact and analyzes the growth of political activity among the detribalized Kikuyu, leading to the current Mau Mau activity. Leakey, the son of missionary parents, was brought up among the Kikuyu, speaks the language, and is an initiated member of his age-set. The Mau Mau are after him.

VI. TOPICAL ISSUES

There is considerable literature, much of it technical, on various topical issues, and of course the territorial governments are organized functionally to handle technical problems. J. K. Matheson and E. W. Bovill have edited a general agricultural survey, *East African Agriculture* (Oxford University Press, London, 1950), which will give the novitiate some necessary background on agrarian problems. Alan Wood has written *The Groundnut Affair* (The Bodley Head, London, 1950), an amusing and popular account of the diabolic misfortunes which befell this scheme. This is a slight volume, written by one who has his own blinders, but it contains references to official documentation for the benefit of the more serious reader.

The development of agriculture is closely related to the widely varying laws on land tenure, which in some places allow land holdings to be uneconomically splintered among many owners. One of the best surveys of this topic is by Charles K. Meek, *Land Law and Custom in the Colonies* (Oxford University Press, London, 1946), which gives generous treatment to the particular problems of East Africa. Articles on land laws appear frequently in the *Journal of African Administration*, and a number of excellent studies of land utilization have been made by geographers.

On economic problems, the writings of S. Herbert Frankel, of Nuffield College, Oxford, are outstanding, and they include especially *The Economic Impact on Under-Developed Societies* (Basil Blackwell, Oxford, 1953) and *Capital Investment in Africa: Its Course and Effects* (Oxford University Press, London, 1938). Another worthwhile work is Thomas R. Batten's *Problems of African Development*, Part I, Land and Labour; Part II, Government and People (Oxford University Press, London, 1947–48). The second volume of Hancock's *Survey*, mentioned above, has a chapter, "Evolution of the Settlers' Frontier." W. M. Macmillan has written *Africa Emergent; A Survey of Social, Political, and Economic Trends in British Africa* (Penguin Books, Middlesex, reprint, 1949), a highly readable account of the origins of European contact with Africa and of the problems and advantages which that contact has produced for the Africans and Europeans alike. Further information on economic problems may be found in the plans prepared by the individual colonies for utilizing the Colonial Development and Welfare funds, in the reports of the Colonial Development Corporation, the Overseas Food Corporation, and the United Kingdom Trade Commissioner in East Africa, and in various documents of the United Nations.

There is no end of publications on African labor, but only two will be mentioned here. Major G. St. John Orde-Browne has written *The African Labourer* (Oxford University Press, London, 1933) and *Labour Conditions in East Africa* (H.M.S.O., London, 1946). The former is a continent-wide analysis of factors affecting African laborers, the latter a field survey of African labor in the post-war period.

On transportation, an excellent and fascinating work has been written by M. F. Hill, *Permanent Way, the Story of the Kenya and Uganda Railway; Being the Official History of the Development of the Transport System of Kenya and Uganda* (East African Railways and Harbors, Nairobi, 1949). This volume tells in subdued phrases the story of the construction of the Uganda railway from the Indian Ocean to Lake Victoria. As a footnote, it can be recorded that the man-eating lions of Tsavo, which brought the railroad construction to a complete standstill for three weeks, are now in the Chicago Natural History Museum!

There is no dearth of excellent studies on education, the latest being *African Education, a Study of Educational Policy and Practice in British Tropical Africa*, produced on behalf of the Nuffield Foundation and the Colonial Office (Oxford University Press, London, 1953). The East African Institute of Social Research at Kampala, Uganda, will shortly begin publishing a series of studies made by its staff. A volume by E. B. Worthington, *Science in Africa: a Review of Scientific Research Relating to Tropical and Southern Africa* (Oxford University Press, London, 1938), is a useful review of the progress of scientific investigation having a bearing on Africa.

The East African Statistical Department has prepared studies of the African populations of the three mainland territories from its basic source, *East African Population Census, 1948* (East African Statistical Department, Nairobi, 1950), and it issues special studies from time to time. The second volume of the study of Robert R. Kuczynski, *Demographic Survey of the British Colonial Empire* (Oxford University Press, London, 1949), is on East Africa. The work is a laborious study of official and unofficial figures on population, with Kuczynski concluding that figures dealing with African populations are of little value for scientific research. In *The Population of Tanganyika* (United Nations doc. ST/SOA/Service A; Population Studies No. 2, Lake Success, Sept. 1, 1949), Irene Taeuber summarizes the existing knowledge of the major characteristics of the population.

VII. INTERNATIONAL CONTROL

The East African territories have been subjected to varying degrees of international control through multilateral treaties, the League of Nations Mandates System (applicable to Tanganyika), and various types of supervision now exercised by different (and differing) United Nations agencies. The agreements contained in the multilateral treaties may be found in the documents of the Berlin Conference of February, 1885, the Brussels Antislavery Conference of July, 1890, and the Saint Germain-en-Laye Conference of September, 1919. Several volumes are concerned with the general effectiveness of these arrangements, including Quincy Wright, *Mandates under the League of Nations* (University of Chicago, Chicago Press, 1930); Benjamin Gerig, *The Open Door and the Mandates System* (G. Allen and Unwin, Ltd., London, 1930); and Arthur B. Keith, *The Belgian Congo and the Berlin Act* (The Clarendon Press, Oxford, 1919).

Information on the mandates under the League of Nations is found in the *Minutes of the Permanent Mandates Commission* as well as in the *Minutes of the Council* and the *Records of the Assembly*. The Commission acted in an advisory capacity to the Council and received and examined annual reports from the Mandatory Powers and written petitions from the inhabitants of the territories. It held thirty-seven sessions between 1920 and 1939. The annual reports on Tanganyika are found in the Colonial Series (although those for 1920 and 1921 bear command numbers 1428 and 1732). Rayford W. Logan has written *The African Mandates in World Politics* (Public Affairs Press, Washington, D.C., 1949), which somewhat exaggerates the role played by the African territories in the diplomatic controversies between the two world wars. The work of Charlotte Leubuscher, *Tanganyika Territory, A Study of Economic Policy under Mandate* (Oxford University Press, London, 1944), is a critique of the financial and economic policies in the administration of Tanganyika under the League.

The research student considering the supervision of African administration by the United Nations will have to examine several types of documents, and a visit to the whispering galleries of the various United Nations delegations would also be valuable in understanding how decisions affecting the African territories are made. For documentary sources, one should consult the *Official Records of the Plenary Meetings of the General Assembly*, the *Official Records of the Fourth (Trusteeship) Committee*, and the *Official Records of the Trusteeship Council*. The petitions regarding Tanganyika are ordinarily found in the *Annexes to the Official Records of the Council*, although the Meru petitioner before the Eleventh Session of the Council presented his statement orally; some are included with the reports of the visiting missions. Thus far, two visiting missions have been to Tanganyika, their reports being entitled *Reports of the United Nations Visiting Mission to Trust Territories in East Africa, on Tanganyika* (U.N. doc. T/218, 13 Nov., 1948; and U.N. doc. T/946, 1951). Additional material on East Africa is contained in the reports of the Standing Committee on Administrative Unions of the Trusteeship Council, which has so far submitted two reports. A summary of the work of the Trusteeship Council and the visiting missions may be found in the *Annual Report of the Trusteeship Council to the General Assembly*.

Under Chapter XI of the United Nations Charter, member nations may submit information on non-self-governing territories, but they are not required to submit information on political developments. The information submitted is found in the document entitled: *Non-Self-Governing Territories: Summaries and Analyses of Information Transmitted to the Secretary-General* (1946-1952). The material in these reports is considered by the Fourth Committee of the General Assembly and by a special committee operating under its aegis, now known as the Committee on Information from Non-Self-Governing Territories, which also submits an annual report.

VIII. SERIAL DOCUMENTATION, PERIODICALS, AND BIBLIOGRAPHIES

Many government documents are published regularly in serial form, including especially the *Annual Report on the Colony and Protectorate of Kenya*, the *Annual Report on Uganda*, the *Annual Report on Zanzibar*, the *Report to the General Assembly on the Administration of Tanganyika*, and the *Annual Report, East Africa High Commission.* These reports contain general surveys of the economic, political, and social developments of the year and are convenient references for items not easily available elsewhere. The reports of the provincial commissioners are of considerable value in providing material on local government, and they frequently include extracts from the reports of district officers. In theory, all colonial publications not printed by H. M. Stationery Office should be available from the Crown Agents for the Colonies, 4 Milbank, London, but apparently a number of useful publications, such as the budgets of local authorities, do not reach London for wider distribution.

For the debates of legislative assemblies, see Kenya, *Legislative Council Debates;* Uganda, *Proceedings of the Legislative Council;* Tanganyika, *Proceedings of the Legislative Council;* and East Africa High Commission, *Proceedings of the East Africa Central Legislative Assembly.* In this connection, the Hansard Society has a useful publication, *Problems of Parliamentary Government in the Colonies* (Hansard Society, London, 1953). Parliamentary debates are, of course, a fruitful source of information on East Africa, and items come up frequently during the question period and during debates on colonial policy. (See *Hansard*, Lords and Commons Debates.) Each territory also has its series on laws, statutes, ordinances, court decisions, budget estimates, gazettes, and the like.

Several useful abstracts and bibliographies have been published. *African Abstracts, A Quarterly Review of Ethnological, Social, and Linguistic Studies Appearing in Current Periodicals*, published by the International African Institute, contains convenient summaries in French or English of the significant contemporary scholarly publications on Africa. The European Affairs Division of the Library of Congress has prepared *Introduction to Africa: A Selective Guide to Background Reading* (The University Press of Washington, Washington, D.C., 1952), which contains a brief description, by territories, of some of the significant books on Africa. The volume is a valuable source for the lay reader unfamiliar with African sources, but it has limited use for the research scholar.

Some five bibliographies have been published in the Nuffield College Series. The first, edited by Margery Perham, *Colonial Government*, Nuffield College Colonial Reading List No. 1 (Oxford University Press, London 1950), is a working list prepared for the training of civil servants and is not an intensive bibliography of any single problem or territory. A bibliography on economic activities in colonial areas is contained in the volume edited by P. Bower, *Colonial Economics*, Nuffield College Colonial Reading List No. 2 (Institute of Colonial Studies, Oxford, duplicated copies, 1946). A new edition of this work will be published shortly by the Oxford Press. The volume edited by C. Comhaire, *Urban Conditions in Africa*, Nuffield College Colonial Reading List No. 3 (Institute of Colonial Studies, Oxford, duplicated copies, 2nd ed., 1952), has topical references on urban subjects, with many references to East Africa. The reading list prepared by Phillip Mayer, *Rural Conditions and Betterment in the British Colonies*, Nuffield College Reading List No. 4 (Oxford University Press, London, 1947), contains general references to agriculture, animal husbandry, fishing, education, nutrition, and welfare; it is not intended for the specialist. The most comprehensive and specialized of the series is the volume *Colonial Law*, Nuffield College Colonial Reading List No. 5, edited by C. F. Meek (Oxford University Press, London, 1948). This is of special value for the study of indigenous law and custom in East Africa.

Periodicals include the following three standard journals of general scholarly interest: *Africa*, published by the Journal of the International African Institute, with emphasis upon ethnological studies; *African Affairs*, published by the Royal African Society, with a variety of interests, historical as well as contemporary; and *African Studies*, published by the Department of Bantu Studies of the University of Witwatersrand, primarily anthropological. *African World* deals with contemporary topics, and presents objective reports on economic and political affairs. One of the most valuable publications is *Journal of African Administration*, which has articles on local government, training of civil servants, problems of land tenure, the structure and operation of native tribunals, and other topics relating to the governing of Africa. Although edited by the African Studies Branch of the Colonial Office, it does not necessarily represent official views or policies. *Corona*, a journal of the Colonial Service, has frequent articles on the administration of African territories.

Journals of a more technical nature include the *Quarterly Economic and Statistical Bulletin*, published by the East Africa High Commission; *East African Agricultural Journal of Kenya, Tanganyika, Uganda and Zanzibar;* and *Colonial Development*, the quarterly magazine published by the Colonial Development Corporation.

Magazines of general territorial interest include *East Africa and Rhodesia*, which frequently reprints contemporary documents and contains lively and thoughtful editorial comment; and *Tanganyika Notes and Record* and *Uganda Journal*, which print a variety of articles of general interest on the territories with which they deal.

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MATERIALS FOR UNDERGRADUATE STUDY OF THE UNITED NATIONS

This article contains a discussion of selected English language materials on the United Nations available to and suitable for use by undergraduate college students and, we hope, their instructors. It omits discussion of materials on the "specialized agencies" and other items which some will think should have been included. It is not intended as a guide for advanced research.[1]

The best material thus far published about the United Nations is that prepared by the Organization itself, principally by the Secretariat. The second best body of material is found in periodicals and in various series which appear irregularly—some published by governments and others by private organizations or individuals. The books that deal with the United Nations comprise a weak third category, whether measured by quantity, coverage, or quality. There are however, good books on the origins of the United Nations, on its peace and security functions, on the Charter, on the Organization in general, and on three of its six main organs—the General Assembly, the Security Council, and the International Court of Justice. There are books on the Secretariat which are barely adequate, but few or none have been written on the Economic and Social Council or the Trusteeship Council. Nor are there books that give adequate treatment of the primary functions of the U.N., such as those related to economic, social, administrative, and financial matters, dependent areas, and the control and regulation of armaments.

Origins of the United Nations. There are nearly a score of significant books that deal with the origins of the United Nations, but most of them treat only the United States preparation. There are no accounts in English of the British, Soviet, Chinese, or any other nation's preparation for Dumbarton Oaks or the San Francisco Conference.[2] The U.S. Department of State has published Harley Notter's valuable and illuminating *Postwar Foreign Policy Preparation, 1939-1945,*[3] which is a rich source book but highly technical, emphasizing procedure more than substantive issues in its account of the six years of study by the United States that preceded the San Francisco Conference. An important companion study being prepared by the Brookings Institution will contain some of the late Leo Pasvolsky's notes and writings on the unique part he played in the preparation for the drafting of the Charter and in the drafting itself.[4]

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[1] For a guide for advanced research, see Carol Carter Moor and Waldo Chamberlin, *How to Use United Nations Documents* (New York University Libraries Occasional Papers No. 1, New York University Press, 1953, 26 p.).

[2] As far as is known one book in Russian is the only one in any language that contains any account of such preparations. S. B. Krylov, *Materials for the History of the United Nations* (Academy of Science of the U.S.S.R., Moscow, 1949, 338 p., translated title.)

[3] Department of State Pub. No. 3580, Government Printing Office, Washington, 1950, 726 p.

[4] The Brookings Institution study may be published during 1954 and, if so, will probably cover the period from 1941 through the ratification of the Charter in August, 1945. Other possible studies in the same series are mentioned later in this article.

There is considerable information about the United States preparation in the memoirs of participants, notably those of Hull, Welles, Sherwood, Vandenberg, Stimson, and Forrestal—the last two being particularly concerned with the trusteeship problem.[5] The decisions made at Yalta concerning the United Nations are well covered in the volumes by Stettinius, Byrnes, Churchill, and Leahy.[6]

The San Francisco Conference of 1945 is the only major international conference to have authorized publication of its records in full (sixteen volumes). The most important of these documents have been brought together in a book published by the Department of State.[7] From participants in the Conference we have accounts such as those by Krylov, Vandenberg, Dulles, Wellington Koo Jr., and the Department of State's report written under the supervision of the late Leo Pasvolsky.[8] The daily column in the *New York Times* by James Reston deserves mention among the important writings about the San Francisco Conference. Its completeness and accuracy were such that delegates at the Conference did not care to begin a day's negotiations without reading it to see what had really happened the day before and what was likely to happen in coming meetings. The special conference edition of the *Times* was placed under the door of the room of each delegate and received an amount of attention seldom given to any newspaper, largely because of the accuracy of the reporting resulting from Reston's remarkable "pipeline." Finally, there is the volume of Senate *Hearings* on the Charter in which Mr. Pasvolsky explained the assumptions and intentions of those who drafted and signed the Charter.[9] It was upon these explanations that the Senate based its advice and consent.

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[5] Cordell Hull, *The Memoirs of Cordell Hull,* 2 vols. (Macmillan, New York, 1948, 1804 p.); Sumner Welles, *The Time for Decision* (Harper, New York, 1944, 431 p.), *Where Are We Heading* (Harper, New York, 1946, 397 p.), and *Seven Decisions That Shaped History* (Harper, New York, 1950, 236 p.); Robert E. Sherwood, *Roosevelt and Hopkins* (Harper, New York, 1948, 1002 p.); Arthur H. Vandenberg, *The Private Papers of Senator Vandenberg,* ed. Arthur H. Vandenberg, Jr. (Houghton Mifflin, Boston, 1952, 599 p.); Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* (Harper, New York, 1948, 698 p.); James Forrestal, *The Forrestal Diaries,* ed. Walter Millis (Viking Press, New York, 1951, 581 p.).

[6] Edward R. Stettinuis, *Roosevelt and the Russians: The Yalta Conference,* ed. Walter Johnson (Doubleday, Garden City, N. Y., 1949, 367 p.); James F. Byrnes, *Speaking Frankly* (Harper, New York, 1947, 342 p.); Winston S. Churchill, *The Second World War: Triumph and Tragedy* (Houghton Mifflin, Boston, 1948); William D. Leahy, *I Was There* (Whittlesey House, New York, 1950, 527 p.).

[7] *The United States Conference on International Organization. . . Selected Documents* (Dept. of State Pub. No. 2490, Government Printing Office, Washington, 1946, 992 p.).

[8] John Foster Dulles, *War or Peace* (Macmillan, New York, 1950, 274 p.); Wellington Koo, Jr., *Voting Procedures in International Organizations* (Columbia University Press, New York, 1947)—this volume contains a brief but the only published account of the discussions in the "Penthouse" at San Francisco. For Krylov's account, see note 2, above, and for Vandenberg's, note 5; for the State Department's report, see *Charter of the United Nations: Report to the President on the Results of the San Francisco Conference . . .* (Dept. of State Pub. No. 2349, Government Printing Office, Washington, 1945, 266 p.).

[9] "The Charter of the United Nations," *Hearings before the Committee on Foreign Relations,* U.S. Senate, 79th Cong., 1st sess. (1945), 723 p.

Memoirs on the Period 1946–1952. There are at least nine books of memoirs by persons who participated in the United Nations during its early years. Those by Arcé,[10] Evatt,[11] Byrnes, and Vandenberg are general in approach, as is the little volume by Abraham Feller.[12] Feller's, however, differs from those of the others in that it pleads for a particular cause and reflects the sense of devoted purpose common to many members of the Secretariat of the United Nations. Mrs. Roosevelt's volumes are both interesting and useful but tend to be anecdotal rather than analytical.[13] Count Bernadotte's posthumously published account of his work in Palestine is useful.[14] In many ways, the most interesting and valuable of all the works by those who took part in the early development of the United Nations is Paul Hasluck's account of the first two years of the Security Council.[15]

Secretariat Publications. One can not overemphasize the value and usefulness of materials on every aspect of the United Nations which are published by the Organization itself. Of this vast tonnage of documentation, the most appropriate and timely for the use of undergraduate students are the annual reports to the General Assembly by the Secretary-General and the three councils[16] and the annual *Budget Estimates.*[17] These documents are prepared each summer for the autumn session of the General Assembly, which coincides with the opening of the autumn college terms, and are followed within a few months by the encyclopedic *Yearbook of the United Nations,*[18] which synthesizes virtually all of the material in the above items and enlarges upon it as well. Unfortunately, because of their official nature all of these publications, with the exception of the "Introduction" to the Secretary-General's report, lack interpretive and evaluative comments. The student must turn elsewhere for such analysis. A more or less popular handbook, *Everyman's United Nations*,[19] is prepared by the Secretariat each year and serves as a valuable guide to the structure and major activities of the Organization. Other significant reference books are the United Nations' *Non-Self-Governing Territories*,[20] *Statistical Yearbook*,[21] *Yearbook of Human Rights*,[22] and the International Court of Justice *Yearbook*.[23]

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[10] Jose Arcé, *Right Now* (Blass, S. A. Tipografica, Madrid, 1951, 180 p.) and *United Nations: Admission of New Members* (Blass, S. A. Tipografica, Madrid, 1952, 253 p.).

[11] Herbert V. Evatt, *The Task of Nations* (Duell, Sloan and Pearce, New York, 1949, 279 p.) and *The United Nations* (Harvard University Press, Cambridge, 1948, 154 p.).

[12] A. H. Feller, *United Nations and World Community* (Little, Brown, Boston, 1952, 153 p.).

[13] Eleanor Roosevelt and H. J. Ferris, *Partners: The United Nations and Youth* (Doubleday, Garden City, N. Y., 1950, 206 p.); Eleanor Roosevelt and William A. de Witt, *United Nations: Today and Tomorrow* (Harper, New York, 1943).

[14] Folke Bernadotte, *To Jerusalem* (Hodder and Sloughton, London, 1951, 280 p.).

[15] *Workshop of Security* (Cheshire, Melbourn, 1948, 181 p.).

[16] United Nations: *Annual Report of the Secretary-General on the Work of the Organization; Report of the Security Council; Report of the Economic and Social Council; Report of the Trusteeship Council.* These four are published yearly as Supplement Nos. 1, 2, 3, and 4, respectively, of the *Official Records* of the General Assembly. The first report contains a concise summary of the activities of the Organization; the last three summarize in greater detail the activities of the three councils.

[17] Published yearly as Supplement No. 5 to the *Official Records* of the General Assembly. This budget document contains a well-organized record of the Organization's administration and expenditures during the past year and the Secretary-General's proposed program of activities for the coming year.

[18] United Nations, *Yearbook of the United Nations* (Columbia University Press, New York, yearly 1947 to date, approximately 1100 pages each).

Delegation Reports. A limited amount of evaluation appears in the reports of delegations to their respective parliaments or heads of state. Of the reports prepared by English-speaking governments, only those of the United States deal at all comprehensively with the activities of the Organization.[24] Reports have been issued by Canada, New Zealand, and the United Kingdom on each session of the General Assembly and by Australia on the first part of the first and the second part of the third sessions.[25] The greatest amount of evaluative comment is in the New Zealand and Canadian reports on the General Assembly and the United Kingdom report on the Preparatory Commission. The United States has published special reports on such topics as the control of atomic energy, the Economic and Social Council, and the Greek problem.[26]

Periodicals. Periodicals form an important source of information about the

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[19] United Nations, *Everyman's United Nations*, 4th ed. (New York, 1953, 433 p.). In its first edition (1948) *Everyman's United Nations* was a small handbook designed for use along with the *Handbook of the U.N.* The latter was discontinued in 1950, and *Everyman's* has more than doubled in size through its editions subsequent to that date.

[20] United Nations, *Non-Self-Governing Territories* . . . (New York, yearly or biennially 1947 to date, approx. 700 pages each). These summarize information on conditions in non-self-governing territories, transmitted to the Secretary-General under article 73e of the Charter.

[21] United Nations, *Statistical Yearbook* (New York, yearly [irreg.] 1948 to date, approx. 500 pages each). These contain yearly world statistics on such subjects as population, agriculture, industry, economics, finance, and education.

[22] United Nations, *Yearbook of Human Rights* (New York, yearly 1947–1950, approx. 500 pages each). These contain documents on both national and international legislation, action, statements, and studies on human rights.

[23] International Court of Justice, *Yearbook* (The Hague or Leyden [irreg.], yearly 1947 to date, approx. 250 pages each).

[24] U. S. Department of State, *United States Participation in the United Nations, Report of the President* . . . ([title irreg., *U.S. and the U.N.*, 1946–48] Dept. of State Pub. Nos. 2735, 3024, 3437, 3765, 4178, 4583, 5034, Government Printing Office, Washington, yearly 1947 to date).

[25] Parliament of Australia, *First Part of the First Session of the General Assembly, Report of the Australian Delegation* (Government Printer, Canberra, 1946). Also for *The Second Part of the Third Session.* Canada, Dept. of External Affairs, *Canada and the United Nations* ([title irreg.] Edmond Coutier, Ottawa, Conf. Series, 1946 to date, approx. 200 pages each). New Zealand Dept. of External Affairs, *The United Nations, Report of the New Zealand Delegation* . . . (Wellington, for each session 1946 to date). United Kingdom Secretary for Foreign Affairs, *Report on the Proceedings of the Second Session of the General Assembly of the United Nations* (H.M. Stationery Office, London, for each session 1948 to date).

[26] U. S. Department of State, *The International Control of Atomic Energy: Growth of a Policy* (Dept. of State Pub. No. 2702, 1946, 281 p.); *The International Control of Atomic Energy: Policy at the Crossroads* (Dept. of State Pub. No. 3161, 1948, 251 p.); *The Economic and Social Council of the United Nations* (Dept. of State Pub. No. 2600, 1946, 74 p.); *The United Nations and the Problem of Greece* (Dept. of State Pub. No. 2909, 1947, 97 p.).

United Nations. The Secretariat produces the most voluminous periodic description of itself in the fortnightly *United Nations Bulletin.*[27] The two most useful private periodicals are *International Conciliation* and *International Organization.*[28] Since June 1945, 33% of the eighty issues of *International Conciliation* and 44% of the leading articles in *International Organization* have been devoted entirely to United Nations affairs. Of special interest in *International Organization* is the section in each issue, usually about fifty pages, which reviews current activities of the Organization. *International Conciliation* has presented carefully documented and interpretive previews of each session of the General Assembly since 1947, the most recent being "Issues before the Eighth General Assembly" (No. 439). Other issues have been devoted to important U.N. problems, such as the control of atomic energy (Nos. 423, 430), the Palestine question (Nos. 454, 464), and technical assistance (Nos. 457, 468).

As for the "learned journals" in the field, the *American Journal of International Law* publishes an average of six articles on the U.N. each year. The American Academy of Political and Social Science has devoted to the U.N. two entire volumes of the *Annals,*[29] constituting about 4% of its total pagination since June, 1945. Occasionally articles on the U.N. appear in the *American Political Science Review,* the *Political Science Quarterly,* and *World Politics.* The Foreign Policy Association, since 1945, has made the U.N. the subject of four out of forty-eight numbers of the *Headline Series.* The Brookings Institution reviews U.N. activities in a section of the monthly issues of its *Current Developments in United States Foreign Policy.* Other periodicals devoted entirely to the U.N. which may be useful to students are the Rotary International's *Report on U.N.* (issued monthly), *United Nations World* (also issued monthly), and publications of the American Association for the United Nations[30] and the United Nations Association of the United Kingdom.[31]

Nonofficial Books. An inspection of the collections in the United Nations Library, which systematically attempts to acquire all materials published on the Organization, indicates that there are, in the English language, fifty-four books (defined arbitrarily here as published works of not less than one hundred pages) for adults devoted almost exclusively to the United Nations and about one hundred eighty pamphlets (of less than one hundred pages). Although books now represent a significant source of information on the United Nations, whether they will continue to do so is a matter of speculation, the answer depending largely on public interest in the U.N. For the slim significance of the statistical inference which might be drawn, it is interesting to observe that seven of these fifty-four books were published during 1946, when the newness of the U.N. created considerable interest. Only five were published in 1947, three in 1948, and five in 1949. Perhaps the concerted action in Korea in 1950 was partially responsible for the publication of eleven books during that year and thirteen during 1951. Decline in publication since that time has been rapid; seven books were published in 1952 and only two up to the end of November, 1953.

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[27] *United Nations Bulletin* (New York, weekly 1946–1947, fortnightly since Jan., 1948).

[28] Carnegie Endowment for International Peace, *International Conciliation* (New York, currently six issues yearly); World Peace Foundation, *International Organization* (Boston, quarterly 1947 to date).

[29] *Annals of the American Academy of Political and Social Science,* Vol. 246 (July, 1946) and Vol. 252 (July, 1947).

[30] American Association for the United Nations, *U. N. Reporter, Speaker's Notes, Peoples Section Bulletin* (New York).

[31] United Nations Association of the United Kingdom, *United Nations News* (London, monthly April, 1946 to date).

It is impossible to be certain of the future trend in the publication of books about the U.N., but if research in progress on doctoral dissertations is any indication, the totals may well increase in the next few years. Figures from the annual lists in this REVIEW show that the number of dissertations being prepared on the U.N. each year is increasing steadily: from three each in 1947 and 1948 to 12 in 1949, 24 in 1950, 22 in 1951, and 33 each in 1952 and 1953. The yearly percentage of dissertations in the general field of political science written on the U.N. has increased from 0.8% of the total in 1947 to 3.5% in 1953.

Of the fifty-four books in the Organization's library, seven have already been mentioned among the writings of those who participated in its development from 1946 to 1952.[32] Eight others were published during 1945 to 1947 and are sufficiently dated not to warrant a strong recommendation for use by students.[33] Eight others are not particularly appropriate for college students. The remaining thirty-one fall readily into three categories: general, organic, and functional.

The sixteen books in the general category treat the United Nations from different points of view. The text by Goodrich and Hambro[34] is probably the best single book about the Organization from all points of view; and even though the present edition was published in 1949, there is no one book on the United Nations that we would recommend with as little reservation. While the approach of this book is strongly legalistic, it also traces the political, economic, social, and administrative activities of the U.N. Instructors seeking a textbook on the U.N. will probably find that Vandenbosch and Hogan is the most adequate.[35] Leonard's satisfactory volume is devoted largely to the U.N. but focuses on the more general field of international organization.[36] The *Annual Review of United*

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[32] Arce (2 books), Bernadotte, Evatt (2 books), Feller, and Hasluck.

[33] Sigrid Arne, *United Nations Primer* (Farrar, New York, 1945, 156 p.); Andrew Boyd, *The United Nations Organization Handbook* (Pilot Press, New York, 1946, 210 p.); William G. Carr, *One World in the Making* (Ginn and Co., Boston, 1946, 100 p.); Stuart Chevalier, *The World Charter and the Road to Peace* (Ward Ritchie Press, Los Angeles, 1946, 179 p.); Louis Dolivet, *The United Nations* (Farrar, Straus, New York, 1946, 152 p.); Stephen Fenichell and Phillip Andrews, *The United Nations: Blueprint for Peace* (Winston Co., Philadelphia, 1951, 151 p.); World Peace Foundation, *United Nations in the Making* (Boston, 1945, 130 p.) and *United Nations at Work* (Boston, 1947, 147 p.).

[34] Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations, Commentary and Documents*, 2d ed. (World Peace Foundation, Boston, 1949, 170 p.).

[35] Amry Vandenbosch and Willard M. Hogan, *The United Nations: Background, Organization, Functions, Activities* (McGraw-Hill, New York, 1952, 456 p.).

[36] L. L. Leonard, *International Organization* (McGraw-Hill, New York, 1951, 630 p.). Other good texts on international organization which give lengthy treatments of the U. N. are Clyde Eagleton, *International Government* (Ronald Press, New York, 1948, 554 p.); Norman Hill, *International Organization* (Harper, New York, 1952, 627 p.);

Nations Affairs,[37] covering each year since 1949, provides a useful companion to the U.N. *Yearbook,* in that it gives some evaluation of each year's activities. It is our opinion that the most interesting book about the United Nations, for its sheer readability, is that by Maclaurin;[38] but because the author's presentation is admittedly one-sided (see his Preface), it must be used with care. Kelsen's controversial and very valuable tome, with supplement, is invaluable for those with a legal bent.[39] Other useful general volumes are those by Bentwick and Martin, Carpenter, Fakher, McClellan, Ross, and Telder;[40] *Peace on Earth;*[41] and the United Nations Association of the United Kingdom's *Yearbook.*[42] There are two good collections of pertinent United Nations documents, one by Harley[43] and one by Sohn,[44] both published in 1950.

Before discussing the books that fall under the organic and functional categories, mention should be made of the Brookings Institution's contemplated series on the United Nations. In addition to its study on the background of the U.N. from 1941 through ratification of the Charter in 1945, other studies are in progress on the development of the Organization from 1946 through 1953 which will treat both organic and functional problems.

Books on individual organs of the United Nations are not numerous: one on

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Werner Levi, *World Organization* (University of Minnesota Press, Minneapolis, 1950, 233 p.); Linden Mander, *Foundations of Modern World Society,* 2nd ed. (Stanford University Press, Stanford, 1948, 928 p.).

[37] *Annual Review of United Nations Affairs,* eds. Clyde Eagleton and Richard Swift (New York University Press, New York, yearly 1950 [covering year 1949] to date [1952]).

[38] John Maclaurin, *The United Nations and Power Politics* (Harper, New York, 1951, 468 p.). There are some well-informed authorities who believe that Maclaurin is the pen name for K. Z. Zilliacus, and these same authorities believe that the books of C. Howard-Ellis and Roth Williams on the League of Nations were also written by Mr. Zilliacus. See E. F. Ranshofen-Wertheimer, *The International Secretariat* (Carnegie Endowment for International Peace, Washington, 1945, p. 409 n).

[39] Hans Kelsen, *The Law of the United Nations* (Praeger, New York, 1950, 903 p.) and *Recent Trends in the Law of the United Nations* (Stevens and Sons, London, 1951, pp. 909–94).

[40] Norman Bentwick and Andrew Martin, *A Commentary on the Charter of the United Nations* (Routledge & Kegan Paul, London, 1951, 244 p.); Francis W. Carpenter, *Men in Glass Houses* (McBride, New York, 1951, 300 p.); Hossein Fakher, *The Relations among the Principal Organs of the United Nations* (Staples Press, London, 1951, 200 p.); Bruce McClellan, *No Phoenix, No Ashes* (Maple Press, York, Pa., 1951, 142 p.); Alf Ross, *Constitution of the United Nations: Analysis of Structure and Functions* (Rinehart, New York, 1950, 236 p.); "Professor Telders" Study Group, compilers, *United Nations Textbook* (Universitaire Pers Leiden, Leyden, 1950, 355 p.).

[41] Essays by Trygve Lie and others, *Peace on Earth* (Hermitage House, New York, 1949, 251 p.).

[42] United Nations Association of the United Kingdom, *Yearbook 1948* and *1949–50* (Huchinson, London, 351 p. and 448 p., respectively).

[43] J. Eugene Harley, *Documentary Textbook on the United Nations* (Center for International Understanding, Los Angeles, 2nd ed., 1950, 1470 p.).

[44] Louis B. Sohn, *Cases and Other Materials on World Law* (Foundation Press, Brooklyn, 1950, 1363 p.).

the General Assembly, Haviland;[45] two on the International Court of Justice, Lissitzyn, and Hambro;[46] two on the Secretariat, Schwebel, and the Carnegie Endowment;[47] and two on the Security Council, Jiménez de Aréchaga, and Clark and Sohn.[48] The last-named also deals with the General Assembly. There is no book on the Economic and Social Council, except Finer's 1946 volume,[49] and none on the Trusteeship Council.

A number of books deal with U.N. functions. There are four on peaceful settlement of disputes: Robinson, Rivlin, Van Wagenen, and Wehl;[50] one on the budget;[51] one on economic and social activities;[52] one on the United Nations and nongovernmental organizations;[53] one on enabling instruments of U. N. members;[54] and two on the international control of atomic energy: the Royal Institute, and Brodie.[55] This list is complete enough to indicate the paucity of nonofficial books of functions on the United Nations.

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[45] H. Field Haviland, *The Political Role of the General Assembly* (Carnegie Endowment for International Peace, New York, 1951, 190 p.).

[46] Oliver J. Lissitzyn, *The International Court of Justice* (Carnegie Endowment for International Peace, New York, 1951, 118 p.); Edvard Hambro, *The Case Law of the International Court* (A. W. Lijthoff's Publishing Co., Leyden, 1952, 699 p.).

[47] Stephen M. Schwebel, *The Secretary-General of the United Nations* (Harvard University Press, Cambridge, 1952, 299 p.); Carnegie Endowment for International Peace, *The United Nations Secretariat* (New York, 1952, 96 p.). The Endowment has announced that it will devote its January, 1954 issue of *International Conciliation* to "The International Civil Service."

[48] Eduardo Jiménez de Aréchaga, *Voting and Handling of Disputes in the Security Council* (Carnegie Endowment for International Peace, New York, 1950, 189 p.); Grenville Clark and Louis B. Sohn, *Peace through Disarmament and Charter Revision* (preliminary print 1953, 149 p.).

[49] Herman Finer, *The United Nations Economic and Social Council* (World Peace Foundation, Boston, 1946, 121 p.).

[50] Jacob Robinson, *Palestine and the United Nations* (Public Affairs Press, Washington, 1947, 269 p.); Benjamin Rivlin, *The Italian Colonies* (United Nations Action Series No. 1, Carnegie Endowment for International Peace, 1950, 114 p.); Richard W. Van Wagenen, *The Iranian Case* (United Nations in Action Series No. 2, Carnegie Endowment for International Peace, 1952, 119 p.); David Wehl, *The Birth of Indonesia* (Allen and Unwin, London, 1949, 216 p.).

[51] Carnegie Endowment for International Peace, *The Budget of the United Nations* (New York, 1947, 63 p.).

[52] Carnegie Endowment for International Peace, *Coordination of Economic and Social Activities* (New York, 1949, 109 p.).

[53] Carnegie Endowment for International Peace, *Consultation between the United Nations and Non-Governmental Organizations* (New York, 1949, 71 p.).

[54] Walter H. Zeydel and Waldo Chamberlin, *Enabling Instruments of Members of the United Nations* (Carnegie Endowment for International Peace, New York, 1951, 126 p.).

[55] Chatham House Study Group, *Atomic Energy, Its International Implications* (Royal Institute of International Affairs, London, 1948, 128 p.); *The Absolute Weapon: Atomic Power and World Order*, ed. Bernard Brodie (Harcourt, Brace, New York, 1946, 214 p.).

BOOK REVIEWS

Seedtime of the Republic: The Origin of the American Tradition of Political Liberty. By Clinton Rossiter. (New York: Harcourt, Brace and Co. 1953. Pp. xiv, 558. $7.50.)

Professor Rossiter has written an outstanding book on American political thought in the colonial and Revolutionary periods. It is based on a very thorough canvass of both primary and secondary literature in the field and is presented in a style as graceful as it is forceful and clear.

The book is divided into three parts of approximately equal length. Part One is a brief history of the political, religious, economic, social, and intellectual factors which worked during the colonial period toward the emergence of liberty. Part Two consists of essays on six men of the same period whose ideas anticipated or contributed to the American tradition. Thomas Hooker and Roger Williams are chosen to represent the first generation, John Wise the middle period, Jonathan Mayhew, Richard Bland, and Benjamin Franklin the decades just prior to the Revolution. All are excellent choices, though this reviewer, sharing the author's belief that our tradition of liberty owes something to its conservative forebears as well as to its democratic heroes, regrets the omission of a stout colonial conservative of the early period. Five of the subjects are familiar figures, but in recreating the career of Bland, Professor Rossiter has made a most valuable move toward unearthing Southern political thought of the late colonial era. With one exception, these chapters are distinguished by extensive research, excellent organization, felicitous writing, and balanced judgment. Oddly enough, the treatment of Roger Williams is disappointingly sketchy and superficial. Williams left a very full record of his political ideas and, to this reviewer at least, they add up to much more than a bundle of "various elements of seventeenth-century republicanism" brought over from England. He combined an almost Hobbesian conception of human nature with a radical belief in liberty, and an expansive belief in political equality with the Puritan conviction that God had chosen and endowed certain men with special talents for governmental leadership. Such ideas are not without relevance for modern democracy, and they might have been analyzed with fruitful results.

To present the heritage of Revolutionary thought in the concluding section of the book, Professor Rossiter has chosen a very different method from that used in Part Two. Instead of singling out a few leading spokesmen he has recorded the voice of the Revolution as the great chorus that it was. Pamphlets, essays, letters, sermons, speeches, resolutions, laws, constitutions—these are the raw materials from which is condensed an extraordinarily concise and yet comprehensive statement of the beliefs that led to independence and to the establishment of republican governments. The author emphasizes the conservative nature of the Revolution; the idealism expressed in the Declaration of Independence balanced by a toughly realistic appreciation of man's political behavior; and perhaps most important of all, the remarkable consensus that existed despite sectional and class divisions. I believe that Jefferson, the Adamses, and all their compatriots would see in this composite intellectual portrait a very good likeness indeed.

As a survey of the growth of liberty during the colonial period, of the careers and ideas of outstanding colonial leaders of libertarian persuasion, and of the political thought of the Revolution, this book is superb. In spite of many excellent qualities, however, it remains, in the end, unsatisfying. In the first place, the book does not really hang together. Most of the men described at length in the heart of the study do not appear to have had direct influence on Revolutionary thought, and Professor Rossiter is quick to admit this. The men of '76 simply did not turn to them for either ammunition or inspiration, though they could have done so with profit. Thus in effect Part Two explores a fine ideological road to the Revolution which the patriots might have taken, but in fact did not.

A second reason for disappointment is the failure of the author, after an industrious tour of research, to come up with new perspectives or fresh insights. One does not want novelty for its own sake, but there is still much about the formative period of our tradition that we do not know or fully understand. For example, in spite of all that has been written about the direction and extent of Puritanism's influence, some questions remain unanswered. How did it happen that at the time of the Revolution, New England Puritans and Southern Anglicans shared so large a body of common political ideas and attitudes? In the essay on Hooker, Professor Rossiter suggests that "the magnificent theories of the social compact, the sovereignty of the people, and the authority of the electors to set limits upon the elected," were "seeds of liberty hidden away in the brittle pod of Puritanism." These ideas were not peculiar to Puritanism. Were the Puritans nevertheless responsible for making them operative in America, or were they part of a common English heritage which asserted itself regardless of the religious context?

Doubtless we shall never be entirely successful in tracing the ideas that accompanied the long colonial experience in self-government, and at the time of the Revolution helped shape so definitively our basic political structure of separation of powers with checks and balances. Recognition of self-interest as a dominant political motive and fear of party and faction were characteristic beliefs of the men who wrote our first state constitutions. These attitudes were deeply rooted in the past. In the New England election sermons of the middle period, for example, one can see reflected very clearly the colonists' concern with the problem of discovering the true public interest and making it prevail over the conflicting claims of individual and factional interests. It would be useful to have this and other vitally important parts of our political heritage thoroughly explored.

Perhaps it is unjust to criticize Professor Rossiter for failing to push further beyond the frontier of our knowledge in this area. What he has done, he has done exceedingly well, and his book cannot but be rewarding to all who share his desire to make the tradition of American liberty a continuing one.

CECELIA M. KENYON.

Smith College.

The Electoral System in Britain, 1918–1951. BY D. E. BUTLER. (London: Oxford University Press. 1953. Pp. xiv, 222. $4.25.)

The Party System in Great Britian. BY IVOR BULMER-THOMAS. (London: Phoenix House Ltd. Distributed by the Macmillan Co. 1953. Pp. vii, 328. $5.00.)

Americans have long been familiar with empirical—even statistical—techniques of examining political parties and elections. Political scientists in Britain, however, have only recently undertaken such studies, having long preferred to devote attention to such other matters as the working of Parliament, the nature of executive institutions, and the legal theory of the constitution. Indeed it would seem that only foreign scholars—notably Lowell, Ostrogorski, and Seymour—have subjected the British system of parties and elections to the diligent scrutiny that such matters have long received in this country. Under review are two valuable books by British students that break with this tradition. Mr. Bulmer-Thomas's book is the first work on the British party system since Ostrogorski; and Mr. Bulter's book is, I believe, the first serious analytical study of the operation of the whole of the British electoral system.

Of the two, the Butler book is doubtlesss the more important. It is a work of unquestionably sound scholarship, based on careful research, and representing the product of several years of study. The author has been associated since the war with the team of scholars at Nuffield College, Oxford, who have undertaken the systematic investigation of the electoral process and who have now published formal studies of the last three general elections.[1] The present volume consists of two related parts, the first comprising a history of electoral reform since 1918 and the second (about one-third of the total) a series of analytical studies of various electoral problems. The chapters on the history of electoral reform serve as a sequel to the earlier works of Seymour and Morris[2] and, apart from their important contribution to this history, are chiefly remarkable for their demonstration that electoral reform has been much less important a subject of political debate in the twentieth century than it was in the nineteenth. This is somewhat surprising in view of the important reforms of 1918, 1928, and 1948; but apart from the struggle over university seats in 1948, there has been little significant controversy. The most vigorous arguments, as Mr. Butler says, "tended to be not so much about the merits of the proposal at issue as about the propriety of putting them forward." This does not mean, however, that the parties have always been in agreement on such proposals. Butler's study clearly shows this to be "the exception rather than the rule." Only in the wartime coalitions have changes been inititated as agreed party measures, and even one of these (1944) led to charges of broken faith.

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[1] R. B. McCallum and A. Readman, *The British General Election of 1945* (Oxford, 1947); H. G. Nicholas, *The British General Election of 1950* (London, 1951); D. E. Butler, *The British General Election of 1951* (London, 1952).

[2] C. S. Seymour, *Electoral Reform in England and Wales* (New Haven, 1915); H. L. Morris, *Parliamentary Franchise Reform in England from 1885 to 1918* (New York, 1921).

The historical section is based primarily upon an exhaustive survey of *Hansard*, supplemented where possible by memoirs and periodical comment. The author has searched his sources thoroughly, as is illustrated by such observations as that on page 134 that a certain member, "for the third time in four years, told the House a story about an election for Belfast University." But whether the resources are yet available for the definitive history is open to question. The events of which Mr. Butler writes are both recent and controversial and many persons yet living have an interest in their interpretation; doubtless some of the evidence is not yet in. But the available materials have been skillfully employed and much has been added to our knowledge of this complex problem.

Even so, the second part of the book on the "working of the system" is of greater importance to political scientists. This is an extremely able study of several aspects of the electoral system based primarily on the election statistics themselves from 1918 onwards. From them the author has drawn conclusions about many important matters such as the significance of the business vote (it had little), the validity of prediction based on by-election results (risky), and the forfeiture of deposits (on the increase). Some of these analyses lay the groundwork at least for a new technique in the study of British elections. By his examination of electoral statistics, for example, Mr. Butler concludes that if P.R. had been adopted, as has at various times been urged by Labour or the Liberals, only two elections of the past eight would probably have returned a party with a clear working majority; furthermore, the alternative vote, which also has had its devoted advocates, would have produced little effect on either the control of the House or the size of majorities.

Perhaps the most interesting feature is the author's description of his own technique of analyzing the returns and his application of this technique to the problem of the relation between seats and votes. He makes clear that no redistricting can be either adequate or final and has at considerable pains shown just how much the present system is prejudiced in favor of the Conservatives. His book is a major scholarly contribution and one may reflect that if the sort of analysis it presents had been available earlier, the progress of and the debate over electoral reform that he here describes might have taken a different course.

It might also have been employed with profit by Mr. Bulmer-Thomas, whose book is of an entirely different sort. This author is a man with close personal experience of the party system of which he writes. He served as a Labour M.P. and minister until 1949 when he crossed the floor and joined the opposition, later standing unsuccessfully for election as a Conservative.

His book, like Mr. Butler's, starts with an historical introduction but its principal purpose is to afford a general description of the parties and the party system. It is pitched at a somewhat lower level of scholarship than is the Butler book and is intended for a much wider audience. This it should achieve, for the subject is of general interest and the discussion of it is able. One might expect from a writer with such intimate knowledge of both parties something less than complete impartiality, yet it is only rarely that the author's personal views are allowed to creep into his discussion. No doubt this is praiseworthy, but at the same time it is a little unfortunate that he so successfully excludes himself from his book. A man with so rich an experience might have shed much light on the party life of an M.P., on his ambitions and frustrations, on his relation to whips and leaders, and on the making of a parliamentary career. Moreover, by concentrating on party organization and structure, he slights the more important questions of the political process itself and the role of party in the determination of policy. Notwithstanding these missed opportunities, his chapters are sound and his discussion helpful.

There are a few sparkling high spots of special interest and value. One is a chapter on the decline of the independent member and another is a fascinating ten pages on the impact of non-party interest groups on the regular party organization. In several such chapters Mr. Bulmer-Thomas makes a real contribution to our understanding of British politics.

His book has been rather severely criticized in England as being too hastily written and, though interesting and useful, rather unsubstantial. There is some truth in the charge; several errors of fact, form, and even typography attest to hurried composition and imperfect editing. But the criticism is too severe. Mr. Bulmer-Thomas makes no claim on scholarship and his book is not meant to be a treatise. Yet it is the first coherent effort to explain the British party system in half a century; the author has done a workmanlike job and, if he has done little "original research" in its preparation, he has read widely in the secondary materials and has not confined himself to his own recollections. Indeed he has ignored them too much. It is unfair to criticize him for writing on so broad a subject without primary research when we can at the same time benefit from the researches of Mr. Butler on the much narrower one. The necessary spadework (such as is here represented by Butler's book) has not yet been done. We need both kinds of effort and should indeed welcome both these books.

WILLIAM S. LIVINGSTON.

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The China Tangle: The American Effort in China from Pearl Harbor to the Marshall Mission. By HERBERT FEIS. (Princeton: Princeton University Press. 1953. Pp. x, 445. $6.00.)

The general conclusion of this important book is stated in the final pages (pp. 429–430) and is both a summary and the recurring theme. The American effort in China after Pearl Harbor "was bent to four connected ends: to uphold the Chinese people in the war against the common enemy; to restore China as a whole and independent country; to secure for China a place of great authority among the nations; and to bring to an end the grave social struggle among the Chinese people. The China we strove to create—a free, strong, democratic and friendly nation—would be, we conceived, a needed partner in assuring peace and security for all in the Far East." In attempting to fulfill these purposes, the author says, "we made great exertions. . . . Our friendship was firm, rejecting every chance to benefit by compromise those who wanted to reduce or rule China. . . . In retrospect, we may have done less in and for China while the war for Europe was being fought out than we might safely and wisely have done. We thought we were only deferring the greater aid until that part of the world-wide struggle against tyranny was won. And then the unexpected happened: the war in the Pacific ended abruptly before our effort in behalf of China reached its planned fullness."

In preparing the narrative which illustrates and leads up to this conclusion, the author has gone through much of the mass of printed sources, including not only the substantial volume, *United States Relations with China* (the famous and much-discussed China White Paper), but also the mountainous accumulation from the Senate subcommittee hearings following the dismissal of MacArthur, the investigation of the Institute of Pacific Relations, and the investigation of the loyalty of the employees of the State Department, both also by Senate subcommittees. He has made use of much unpublished manuscript material left by some of the principal actors, pertinent files of the State Department, and papers in the Roosevelt Library at Hyde Park. He has interviewed numbers of those in prominent posts—most of them in the government of the United States, but also at least one in the Nationalist government—who were involved in the issues which are covered.

Dr. Feis has sought to be objective, notably so in handling the highly controversial topics which his subject demands that he treat. In this his success is striking. On some points he has not hesitated to express his opinions. On others he frankly disclaims the possession of enough data to venture on a conviction.

The result is a volume which is a "must" for all seriously concerned with the foreign relations of the United States. It is a book that will last. For years to come anyone dealing seriously with the subject which is its theme will find reference to it both helpful and necessary.

The author covers all the main aspects of his assignment. As is proper, he devotes much attention to military matters. He has a great deal to say on the contrasts in procedure advocated by the various generals—of Chiang Kai-Shek's requests and their only partial fulfilment, of the differing proposals for the recapture of Burma, of the conflict between Stilwell and Chiang, of the opposing plans of campaign of Chennault and Stilwell, and of the fashion in which, taking over after Stilwell, Wedemeyer eased the tensions. He describes the relations between the Kuomintang and the Communists. He narrates the efforts of various Americans, including Hurley, to bring the two together in the common effort to defeat the Japanese and to resolve without exhausting civil war the reciprocal antagonisms. He notes the growing distrust of Chiang and the Kuomintang which was exhibited by many Americans, both those in official position and the representatives of the press, and the good press given the Communists with the impression that they were not true Communists but rural reformers. He remarks how few if any Americans dealing with China, whether in the diplomatic service, in other branches of the government, or not in government employ, were familiar with Communist literature in general and in particular with the writings of Mao Tze-tung and those associated with him. He records the repeated assertions of Stalin and Molotov to highly placed American officials that they did not regard the Chinese Communists as true to that name and that in defeating the Japanese reliance must be placed on Chiang and not on the group in Yenan. He does not venture an opinion as to whether these statements were honest or were attempts to mislead the United States. The author has much to say of the Yalta Agreement, of its outgrowth from preliminary efforts to draw Russia into the war against Japan, of the attempts, only in part successful, to tone down Stalin's demands in Manchuria, and of the wording which was capable of contrasting interpretation by the Russians and the Americans. He points out the lack of coordination between the several branches of the United States government in dealing with China and the fact that most and perhaps all of the time the State Department had only a minor voice in the major decisions.

The book is one to read and ponder. It is to be hoped that the author will go on with the story, carrying it through the Marshall mission and eventually through the Korean war.

KENNETH SCOTT LATOURETTE.

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Asian Nationalism and the West: A Symposium Based on Documents and Reports of the Eleventh Conference of the Institute of Pacific Relations. EDITED BY WILLIAM L. HOLLAND; GEORGE McT. KAHIN, PHILIPPE DEVILLERS, T. H. SILCOCK, AND UNGKU A. AZIZ, CONTRIBUTORS. (New York: The Macmillan Co. 1953. Pp. viii, 449. $5.00.)

The "liberation" phase of Asian nationalism, William L. Holland asserts in his introduction, has largely ended, and as that nationalism enters new stages of development, a more accurate comparison of its distinctive properties may be possible. There have been few attempts, however, to characterize the various Asian nationalisms in the post-colonial stage. Native leaders, preoccupied with the attainment of independence and the problems that confront infant nations in a power world, have been unable to give specific form and content to their national aspirations, often continuing to utilize "anti-colonial" slogans that have lost their validity in recent years. This "political lag" and the ambiguity of national goals, Holland cautions, breed a situation that extremists might exploit.

This book presents a considerable body of material on the background of and recent developments in nationalist movements of South and East Asian nations, although it does not pretend to be a comprehensive treatment of the problem in each country. The symposium is divided into three parts. The first section is Holland's introduction, "New Trends in Asian Nationalism," devoted in part to comparisons and to outlining the problems that the post-colonial stage of nationalism poses to the area as a whole and to the West; and in part to treatments of aspects of nationalism in six nations, three of the discussions being extracted from papers read at the I.P.R. Conference at Lucknow in 1950. There is a short study of economic and cultural nationalism in the Philippines, an analysis of prewar nationalism in Japan, a discussion of the ethnic and religious components of nationalism in Burma and Ceylon, and an excellent comparison of Indian with Chinese nationalism. This section, of course, was not designed to develop more than specialized facets of nationalist movements; nevertheless one keeps expecting a discussion of the interplay between social and economic factors and fuller treatment of Communist machinations in the respective nations under consideration. It was no doubt impossible to analyze all of the important variables operating in the complexity of Chinese nationalism in the few pages devoted to this topic.

Some of what is lacking in the first section is taken up in the concluding section of the study. It might have been advantageous to combine a portion of the two to give a more comprehensive treatment, perhaps in summary, comparative form. This last part of the book is devoted to summaries of the round table discussions at the Conference. Here the conferees run the gamut of Asia's problems: poverty and population, industrialization and diversification, investment and technical assistance, Communist tactics, and the transplanting of Western institutions to Oriental soil. Nor are the problems of foreign policy overlooked: Kashmir, Formosa, Korea, Pacific Pact, New Guinea, and the rôle of India. Much of this section is helpful in pointing up attitudes of Asians toward their own problems, their anxieties over Western policy, and some of their misunderstandings of that policy. There are some minor inconsistencies in either the discussion or the reporting, as, for example, over the question of whether the Malayan Communists were receiving outside aid (pp. 368, 389). Some observers today would take issue with the consensus of one panel that the Communist government in China was "probably a vast improvement" over its predecessor. The book was unfortunately delayed in going to press, with the result that the discussion of the treaty with Japan is dated; moreover, the members of that panel tended in some respects to be a little too optimistic in their appraisal of the Japanese scene. The total study, already encompassing a wide area, does not include an analysis of Korean nationalism.

A central portion of the book is a reprint of three of the Conference documents. The first, "Indonesian Politics and Nationalism," by George McT. Kahin, is a documented analysis of the cultural and political forces that fashioned a nationalist movement capable of filling the power vacuum left by the surrender of the Japanese. The author recounts historically the development of the unitary state (he disagrees with those who consider the Hague Agreement a legal barrier to the abandonment of the federal system) and the evolution of the various Indonesian ministries and the difficulties they faced. There follows a rewarding examination of the problems confronting the new state, especially those of bureaucracy, personalized politics, and the relationship of ruler to ruled.

"Vietnamese Nationalism and French Policies," by Philippe Devillers, is a translation of the closing chapters of a larger work in French. This Conference document advances the thesis that at the end of the war the Vietminh regime in Indochina was an unpopular one. A clearly enunciated and quickly executed policy (looking toward independence) on the part of France, he contends, would have encouraged the emergence of nationalist forces to compete with the power of Ho Chi Minh. However, French procrastination, largely resulting from the internal bickering at home, enabled the Communists to strengthen their control over the nationalist movement. Although Bao Dai was able to exact important concessions from France, the delayed transference of sovereignty weakened his hand and made Communist propaganda more effective. There is a paucity of documentation in this work, and a discussion (which was included in the original treatise) of the relationship of the Ho forces to international communism and the French Communist party would have been revealing.

In their paper, "Nationalism in Malaya," T. H. Silcock and Ungku A. Aziz have clearly spelled out the peculiar characteristics of the nationalist movement in that area, with special emphasis upon racial discord and external influences. The authors deal with the effects of the Japanese occupation upon the several racial groups, following with an historical treatment of postwar developments and problems and the interrelation between communism and the components of nationalism. A few additional references and a more complete treatment of the impact of Britain's recent trade policies would have been helpful contributions to an up-to-date analysis of the Malayan situation.

The treatment of such a broad, evolving, and complicated phenomenon as Asian nationalism must in certain respects be cursory, and the minor criticisms implicit in this review in no way detract from the vast array of useful data and challenging comparisons that portray the complexity of Asia's problems.

JOHN E. TURNER.

University of Minnesota.

Governing Postwar Germany. BY EDWARD H. LITCHFIELD AND ASSOCIATES. (Ithaca: Cornell University Press. 1953. Pp. xvii, 661.).

Among the numerous books dealing with Germany published in the United States since World War II this book is likely to be regarded generally as one of the most important. Its authors have brought to their analysis more than ordinary professional background and have also had the opportunity to observe developments from official positions in most cases. The book has been in course of preparation for several years and its scope and contents have been reviewed again and again—indeed few works dealing with current problems have received as careful planning and preparation. While by no means avoiding conclusions, the authors have gone to considerable pains to present their material objectively and to explain various points of view. Though dealing with a rapidly changing situation the book should contribute to the work of serious students for some years.

The arrangement of using a group of collaborators has the advantage of bringing together the broad experiences of a number of persons. No one looking even casually at the records of this particular team can be oblivious to the remarkable coverage involved. The use of a group presents certain difficulties: the avoidance of duplication and overlapping, the agreement on level of treatment, the exact period to be covered, and so forth. In a group which includes the prima donnas to be noted in this particular collection such complications could prove beyond control and the editor deserves great credit for achieving the large measure of success to be observed. That is not to say that there is no overlapping—a reader notes a fair amount of repetition in the chapters dealing with political parties and governments in Soviet Germany and in the ones discussing the constitution of the Federal Republic and legislation, for example. Nor can it be stated that every topic is presented in the same detail—personnel management is dealt with far more thoroughly than organization and methods control. Moreover, the period covered is not the same in every case—Professor Brecht, for example, brings his discussion of public personnel up to the middle of 1953 while Dr. Glaser in his consideration of Eastern Germany closes with 1951.

Other problems frequently almost insurmountable in the use of a group of persons who have participated in spectacular programs such as the occupation of Germany are those of keeping personal reminiscing within reasonable limits, and of attaining proper objectiveness. The impossible has not been accomplished here, as one may note in reading Dr. Grace's chapter on education, which dismisses the three years of his predecessors as "more or less devoid of an educational and cultural relations effort" (p. 458); but the editor has managed to do more in this respect than one might expect, perhaps because he has himself set the tone in his two introductory chapters.

Aside from the divergencies noted above there is one weakness which appears of major import to this reviewer: the slight attention paid to "the executive," the "policy-determining organs of government," and the like. The chancellorship, the presidency, and the cabinet are mentioned in passing in the chapter entitled "The Constitution of the German Federal Republic," but no detailed treatment of this most vital aspect of government is attempted anywhere in the book. Of course, it is not a simple matter to penetrate into some of the "holies of holies" here represented, but some of the participants might have thrown a fair amount of light on what in the last analysis would seem the central point of government.

Space does not permit more than the barest additional comments, but some reference should be made to the admirably written and illuminating chapters of Dr. Litchfield dealing with the evolution of postwar governments, the excellent chapters of Roger Wells discussing state and local government, the outstanding analysis which Dr. Brecht makes of personnel management, and the two concluding chapters on parties and elections by R. M. Scammon. Contributions by Karl Loewenstein, Rodney Mott, John Hay, A. M. Hillhouse, Taylor Cole, and Howard P. Jones are all of a high level. A carefully selected group of documents, some of which are not readily accessible elsewhere, concludes the volume.

HAROLD ZINK.

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The Diplomats: 1919–1939. Edited by Gordon A. Craig and Felix Gilbert. (Princeton: Princeton University Press. 1953. Pp. xiv, 700. $9.00.)

In the roseate glow of the false dawn that followed the Paris Peace Conference, many Americans and some Europeans were only too glad to persuade themselves that the time had come to bury that sinister figure, the diplomat. Before the tombstone could be erected, however, the corpse was hustled back to life. Even fortunate America, protected from foreign sin by her oceanic moats, ultimately had to learn to coexist with all sorts of strange bedfellows through the old-fashioned bundling process of diplomatic accommodation. *The Diplomats: 1919–1939* focuses a searching spotlight on the activities of a number of prominent practitioners of that ancient art who played significant roles in the world drama during the interwar period.

This volume should not be thought of nor judged as a traditional diplomatic history. In the words of the editors, "the basic problem with which this book is concerned is that of the significance which traditional diplomacy possessed in a period in which its institutions were assailed from the democratic, as well as from the totalitarian, side but during which . . . it continued to be employed by all Powers as an instrument for attaining national objectives." And, for Americans in the audience, the editors add that "a book which shows how dangerous suspicion of the conventions and practices of diplomacy can be, if it is not modified by an earnest desire to make use of those aspects of the diplomatic art which have been proven by time and experience, may serve a useful purpose." In spite of some regrettable omissions, due primarily to lack of adequate evidence, these essays throw light on most of the major figures. And the presentation is enhanced by exceptional clarity, discernment, polish, and economy of language.

One is reminded by this analysis that diplomacy did not flourish equally well in all climates during the period reviewed but tended to prosper only when a nation cast anxious or covetous eyes beyond its borders, usually related to some real or imagined threat to its survival, and when there was no overwhelming preponderance of power for or against it. One is also impressed with the fact that, as in most professions, here also experience and specialized skill can be of decisive importance. No amount of righteous fulmination on the part of William E. Dodd, United States ambassador in Germany from 1933 to 1937, could compensate for his deficiency in diplomatic background and hence lack of appreciation and capacity for objective, comprehensive, and intensive reporting. Contrary to the popular impression in some quarters that an envoy is little more than a glorified messenger boy, this study reveals that several of the more effective diplomats wielded significant influence in making policy as well as implementing it. In all countries, moreover, the growing complexity of international relations has widened the scope of the diplomat's participation and made the task of coordination more difficult. As the State Department had such competitors as the Board of Economic Warfare, so Wilhelmstrasse had its *Büro Ribbentrop*.

This analysis also provides fresh insights regarding the incessant balance of power process. Perhaps most significant is the evidence which reminds one that that process is never automatic or inevitable in its operation. Aside from the difficulty of weighing various national power potentials at any given moment, there are the ideological factors that lead men to resist making decisions on a sheer material power basis. The classic interwar example of this was the reluctance of England and France to counteract the rising tide of Nazi aggression by joining forces with the Soviet Union. Furthermore, it is clear that one must not underestimate the ethical considerations that lay behind much of the so-called appeasement movement, especially among British socialists and religionists. Above all, one is impressed with how eternally difficult and time-consuming it was, and continues to be, to harness two "sovereign" nations together with any degree of effective and continuing synchronization, even with considerable goodwill on both sides, as in the case of Britain and France.

All in all, few historical treatments of diplomacy have given us as rich and useful an account as this. This reviewer wishes only that the authors had made their criteria for evaluation more explicit and their judgments more intensive. What criticism there is deals primarily with the accuracy of the diplomats' reports and forecasts. It seems unfortunate that there is no deeper and more direct exploration of the failure of so many interwar envoys, including representatives of relatively democratic governments, to be bolder protagonists of democratic rather than antidemocratic objectives, especially since the authors recognize the policy-influencing role of the diplomat.

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Sociology and Psychology of Communism. BY JULES MONNEROT. TRANSLATED BY JANE DEGRAS AND RICHARD REES. (Boston: The Beacon Press. 1953. Pp. 339. $6.00.)

European Communism. BY FRANZ BORKENAU. (New York: Harper & Brothers. 1953. Pp. 564. $6.00.)

Monnerot's volume does not live up to its ambitious title. It contains some interesting observations in the Freudian and Jungian vein on the psychology, not so much of communism in particular, as of dictatorship and secular religion in general. It is based almost exclusively on secondary sources. Though it may be argued that in dealing interpretatively with so vast a topic one need not necessarily use primary sources, it does arouse suspicion if an author betrays ignorance of the standard works quoted by him. Thus, to mention one example only, Monnerot reproaches Michels for his alleged failure to "allow for the fact that German social democracy . . . succumbed unconsciously to the pervasive Prussian influence of the prestige of the German army . . ." (p. 33).

The author claims to present a sociology of communism, but the reader will search in vain for even the most rudimentary data on the social structure of the Communist parties or the institutions of the Communist regimes. Instead, he is given some rather commonplace socio-philosophical observations about communism as a totalitarian dictatorship and as a secular religion. Instead of investigating communism's novel and unique qualities, Monnerot interprets it as merely another form of Islam, Caesarism, or tyranny, without every clarifying these concepts.

While Monnerot's approach is by far too general and too vague to yield significant new insights, Borkenau almost overwhelms us with factual details. As a lifelong student of communism trying to present the history of European communism, he has no doubt the right and the duty to be specific; yet, in this work, he does not manage to combine historical and sociological methods as successfully as in his *World Communism.* Nowhere does the present volume reach the high level of those chapters of his previous book in which he so brilliantly explained the unique condition of Russian culture as a basis for Bolshevism and so acutely analyzed the social composition and fluctuation of the Communist parties. When Borkenau wrote his earlier work, he had indeed been close enough to communism to know it at first hand and far enough removed to evaluate it without excessive bitterness.

The present book is considerably more subjective. Though all of us will agree that communism constitutes a formidable threat to Western civilization, not everyone will identify it with fascism. Nor is it a mere extension of the apparatus of the secret police. In the underdeveloped parts of Asia or in countries shaken by crises, such as Italy or France, the Communist movement is, even today, a perverted expression of genuine yearnings of the masses of workers and peasants for a better life. Unfortunately, Borkenau underrates this aspect of communism as a manipulated mass movement. Hence his history of communism becomes a sequence of ideological, organizational, diplomatic, and military moves and maneuvers. Finally, as against his *World Communism* with its bibliographical notes, the scholarly apparatus of *European Communism* is quite inadequate. So controversial a subject treated so subjectively needs the most painstaking and thorough documentation.

Nevertheless, Borkenau's book is indispensable reading for the student of communism, who will appreciate the competence of the author in using rare and almost unknown material. The general reader will at least enjoy an immensely interesting story told in masterly fashion. The first chapters constitute the best summary ever written of the origins of the Third International and the developments from 1919 to 1934. Part II of the book deals in great detail with Popular Front policy, tracing its ups and downs in France and Spain. In Part III Borkenau tries to recapture the shifts and twists of the Communist strategy in the days of the Hitler-Stalin pact and the war alliance with the West. The concluding part contains much valuable material on the progress of communism in Western Europe and in the Popular Democracies all through the forties.

In contrast to Monnerot's ill-fated attempt, Borkenau's book is a valuable contribution to the understanding of communism. Perhaps it is permissible to express the hope that, one day, the author will use his profound knowledge of the subject to give us a real treatment of the sociology and psychology of communism.

OSSIP K. FLECHTHEIM.

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The Federal Loyalty-Security Program. By ELEANOR BONTECOU. (Ithaca: Cornell University Press. 1953. Pp. xi, 377. $5.00.)

Even the casual observer cannot in recent years have escaped some impressions that loyalty and security constitute important issues in the federal service. The findings of the Canadian Royal Commission investigating espionage in that government, the accounts of espionage methods given by Whittaker Chambers and Elizabeth Bentley, and the case of Judith Coplon, all point to the existence in the Communist party of "a hard core of disciplined and dedicated revolutionaries, who can be relied on to penetrate the ranks of labor, government, and intellectuals and in this way gain what Mr. Justice Jackson has called 'a leverage over society'" (p. 7). To our knowledge gained from the facts about disloyalty and espionage among public servants have also been added, ever since the days of Congressman Dies, widespread fears based on the well publicized fancies of a number of legislators.

In this context has grown up the "federal loyalty-security program." What began as shrill and spasmodic attacks on the loyalty of a few public employees has in little more than a decade become a rather respectable program of personnel administration. It partakes of the typical characteristics of the bureaucratic way of life. In seven appendices this book assembles almost a hundred pages of statutes, executive orders, rules and regulations, memoranda, and the other paraphernalia of the program. While this machinery often gives evidence of having been improvised, it grinds away as a costly part of our system of personnel administration. Had Miss Bontecou been able to include the recent changes in the program under the Eisenhower Administration, she would simply have confirmed how fully accepted is the logic of probing into the loyalty of federal employees.

In its carefully developed detail, this volume focuses sharply on the portentous development of the purpose of the program. Stated generally, the program of course is intended to prevent the employment of persons who are disloyal and who might endanger the security of the United States. But what kinds of acts mark a man as disloyal? What overt conduct permits a loyalty board to infer that his devotion to the United States is at a dangerously low level?

From the cases that have come before the loyalty boards Miss Bontecou has put together a disconcerting picture of the answer to these questions. She reports: "Among the eighty-five [cases] studied by the writer, not one was found which involved charges of treason, sedition, espionage, sabotage, or advocacy of the overthrow of the government by force or violence, and no such cases were reported by the agency officials interviewed" (p. 105). Rather, disloyalty means "communism." But communism is not judged simply by membership in the Communist party or in organizations closely identified with it. In the light of charges brought against federal employees, communism can be said to include sympathy for the party line, reading Communist literature, and, most commonly, association with individuals "who in turn are said to be subversive or connected with organizations named by the Attorney General" (p. 110). "Proof" of charges such as these permits the inference that the individual accused is disloyal.

Miss Bontecou's analysis of "derogatory information" and the "Attorney General's list" supplies the key for understanding "proof." The loyalty boards make their charges essentially on the basis of investigation reports containing derogatory information. The accused employee must then rebut the presumption of disloyalty created by the charges. Derogatory information may be highly irrelevant (the parking of one's car in the neighborhood of a Communist front meeting) and, even worse, may be entirely false. But the investigative process is not adapted to determining relevance or truth. The Attorney General's list is a similarly inept tool. As Miss Bontecou points out, "No one can be sure that at some future date the Communists may not attempt to capture the organization to which he belongs. . . . If the Communists succeed, one's present or future career may be jeopardized under the present practice" (p. 204). Yet the burden of answering charges based on the irrelevant and the false rests upon the accused employee. Moreover, the mechanics of adjudication do not ordinarily permit him an opportunity to confront or cross-examine his accusers. He has no way of meeting the implication that he is disloyal by virtue of membership in an organization on the Attorney General's list.

The present direction of the loyalty-security program seems to Miss Bontecou to find its closest parallel in the Holy Inquisition rather than in Anglo-American legal tradition. But the courts have not yet clearly determined the major questions about the rights and duties of public servants. Hopefully, the analysis of this volume suggests that perhaps the courts "will find that they are not really being asked to choose between the conflicting interests of individual freedom and national security, but are dealing with different aspects of the larger problem of national security. They may then decide that the maintenance of our traditional freedoms and our traditional respect for fairness is as necessary to our safety as a free nation as are the forging of secret weapons and the raising of armies" (p. 236).

As a study of civil liberties this book provides cause for real alarm. But have we perhaps gained security? It seems fair to infer that we have not. Indeed, it may be that the whole program has weakened the public service and thus damaged our national security. But even on its own terms the program has not quieted the hysterical legislators nor reassured those genuinely anxious about security.

How does it come, then, that we appear willing to hang so defective a program on our personnel system? Miss Bontecou recognizes that the answer to this fundamental question must be sought in the "predominantly illiberal" mood of the public at present. Perhaps what seem to be failures in the program merely are forecasts of success—success measured by new standards, where secret testimony of F.B.I. informers, proscription by fiat of the Attorney General, and thought-control by loyalty boards become genuinely efficient instruments to destroy heresy and insure loyalty.

EGBERT S. WENGERT.

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The Constitutional Principles of Thomas Jefferson. By CALEB PERRY PATTERSON. (Austin: University of Texas Press. 1953. Pp. x, 211. $4.00.)

Significant indeed is the persistence and universality of the influence of Jefferson. This son of the earliest frontier was the first thoroughly American national statesman in that he freed himself from the clutch of alien dogmas and adapted his ideology completely to the American scene. Let it never be forgotten that he was the patron saint of every major American political party except the Federalist. The Whigs insisted that, as champions of the legislature against King Andrew I, they were the only real Jeffersonians. The first Republican platform (1856) named but two founding fathers—Washington and Jefferson. Lincoln's letter of April 6, 1859 to H. L. Pierce and others reveals that Republicans were celebrating Jefferson's birthday. "The principles of Jefferson are the definitions and axioms of free society," appears repeatedly in Lincoln's letters. Jefferson can be monopolized by no single group of Americans.

Professor Patterson has read the writings of Jefferson diligently, intelligently, and with a definite purpose. That purpose, however, is not a scientific analysis of the incomparable statesman's constitutional principles, which are used instead in a passionate protest against current trends. The title might well have been "If Jefferson Were Living Today." This reviewer gets the impression he might have been a Bourbon Democrat if not a Liberty Leaguer or even a Dixiecrat. At any rate he would never have been a New Dealer. This pattern of interpretation is forecast in the preface. "For almost one hundred and fifty years, down to the fateful year of 1932, his [Jefferson's] party remained loyal to his conception of the Constitution" (p. ix). Franklin Roosevelt tricked the American people, especially those who elected him in 1932. "They did not foresee that his and his successor's administration would shamelessly abandon those principles" (p. ix).

Professor Patterson considers Jefferson as a lawyer, his "making" of our Constitution, his theory of constitutionalism, his maintaining the fundamental law, his opposition to the strong executive and to bureaucracy, and his views on the judiciary, the general welfare clause, and other constitutional issues.

It is the current abandonment of Jefferson's natural law and natural rights that Professor Patterson most vehemently laments. "The limited state, the agent of man, has been converted to the totalitarian state, the master of man. This boulder of conservatism has been appropriated by our authoritarian liberals and made the Rock of Gibraltar on which the Leviathan statism now rests. This is how the doctrine of Von Treitschke and Nietzsche—the foundations of Hitlerism—the organic state—have been substituted for the natural law as the basis of American government" (p. 65). Justice Holmes is the "father of this revolution" against natural law and along with his disciples on the Supreme Court has achieved what "amounts to the establishment of a unitary totalitarian state in the place of our constitutionally limited federal system of government" (p. 64).

Stern judgment is passed on the erratic electorate because "it chose leaders who have abandoned the very foundations of our democratic heritage and our constitutional system of government" (p. 63). That there may be no mistake about it the marplots are listed. "Thanks to social scientists, behaviorist psychologists, and modern pragmatists belief in the doctrines of natural law and natural rights is no longer thought to be intelligent or informed. But have we lived to see the day when to be a democrat, one must be a moron, when to have ideals is foolish"? (pp. 63–64).

Professor Patterson's assumption that the Democratic party was faithful to Jeffersonian principles until 1932 ought to be qualified by the fact that Democratic National Conventions refused to pledge the party to the Declaration of Independence from 1844 to 1896. One looks in vain in this treatise for a recognition of the relation of ideology to social forces. For example, condemning the bureaucrats for telling the farmer "what to sow and what to reap and how he can market his products and for what prices" is wasted ink as long as "God's chosen people" won't let even a Republican administration have it otherwise.

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American Capitalism: The Concept of Countervailing Power. BY JOHN KENNETH GALBRAITH. (Boston: Houghton Mifflin Company. 1952. Pp. xi, 217. $3.00.)

Big Business: A New Era. BY DAVID E. LILIENTHAL. (New York: Harper & Brothers. 1952. Pp. xii, 209. $2.75.)

Giant Business: Threat to Democracy. BY T. K. QUINN. (New York: Exposition Press. 1952. Pp. 321. $3.75.)

Thorstein Veblen long ago argued that "the point of view of economists has always been in large part the point of view of the enlightened common sense of their time. The spiritual attitude of a given generation of economists is therefore in good part a special outgrowth of the ideals and preconceptions current in the world about them."[1] Adam Smith's *Wealth of Nations* is a classical illustration in point. Written as a philosophical protest against the web of restrictive controls which under a guild society and a mercantilistic state had been woven into the fabric of the contemporary economy but which under the influence of the new industrialism and rising entrepreneurial class had come to be honored more in the breach than in the observance, it immediately won wide popularity both at home and abroad. It did so because it was the "outgrowth of the ideals and preconceptions" of Smith's world. Throughout the nineteenth century it afforded the rationale and rationalization for a free competitive economy. But as it did so the structure of the contemporary economy was rapidly changing. By the end of the century the Great Combination Movement in this country had transformed an economy of numerous sellers into an economy of few. The first two decades of the twentieth century accentuated the trend. The change in structure called for a new economic theory. It has brought forth Chamberlin's *Theory of Monopolistic Competition,* Joan Robinson's *Economics of Imperfect Competition,* Clark's "concept of workable competition," Schumpeter's "perennial gale of creative destruction," and now Galbraith's *The Concept of Countervailing Power.* The latter has been heralded by its publishers as comparable in its theoretical significance to Smith's *Wealth of Nations.* Many economists will challenge such high praise, but they can scarcely deny that Galbraith's "countervailing power" illustrates that the problems economists think about and the way they think about them are products of the institutional arrangements out of which the problems have arisen. Galbraith has furnished a rationale and rationalization for big business and an economy of the few.

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[1] "The Preconceptions of Economic Science," *Quarterly Journal of Economics*, Vol. 13, pp. 121–50, at p. 125 (Jan., 1899). This article is reprinted in *The Place of Science in Modern Civilization* (New York, 1919), pp. 82–113.

His concept of countervailing power is not difficult to recapitulate, but no recapitulation can do justice to his engaging style and his delightful imagination, or to his broad but sometimes unprecise grasp of the history of industry and of ideas. Galbraith believes that efficient exploitation of modern technology requires business units so large that if left to themselves they will inevitably have power over the market. But not only does technology beget monopoly; monopoly begets technology. Without the large industrial research laboratory, technological progress will inevitably slow down, if indeed it does not come to a halt. The dilemma thus created—that big business is essential to progress but tends to behave like monopoly—is solved by countervailing power. Power on one side of the market begets power on the other side and countervailing power, like atomistic competition in bygone days, checks the avarice of monopolists and turns to public benefaction their remarkable technological achievements.

"The operation of countervailing power is to be seen with the greatest clarity in the labor market, where it is also most fully developed" (p. 121). The United Steel Workers is a direct response to the power of the steel industry. Before its organization, men in the steel industry worked twelve hours a day, seventy-two hours a week, with an "incredible twenty-four-hour stint every fortnight when the shift changed" (*ibid.*). The countervailing power of labor, by putting an end to such intolerable conditions, has brought good to the whole economy. The Great Atlantic & Pacific Tea Company by matching the power of big food manufacturers has brought cheap groceries to every housewife; Sears, Roebuck by "exploiting its role as a large and indispensable customer" (p. 125) has bought Goodyear tires at wholesale so cheaply that it could undersell Goodyear itself in the retail market.

Power blocs do for an economy of big units what competition does for an economy of small units. They are the invisible hand which guides economic activity towards good and gracious goals. But countervailing power cannot be unfailingly relied on. Its germination may not always be spontaneous, and once in operation it may not always be socially beneficial. Rising prices may check its beneficent propensities in periods of inflation. Hence the state must at times play the dual role of creator and regulator. It must bring countervailing power into being when natural forces are inadequate to give it birth and must regulate it in the upswing of the business cycle. Specifically, the state must at such times set up price controls to protect consumer interests.

Such is Galbraith's comforting doctrine. While it contains some truth, it has shortcomings. I believe that it conceals rather than reveals the real causes of the rise to power of our giant industrial corporations, that it inaccurately interprets their significance to market behavior, and that Galbraith falsely interprets the implication of countervailing power for a democracy.

Galbraith's concept of countervailing power involves a counterconcept, that of original power. This he conceives as the traditional monopoly power condemned by economists, but he does not explain its origin. Original power Galbraith loosely identifies with the power of sellers, countervailing power with the power of buyers: "The long trend toward concentration of industrial enterprise in the hands of a relatively few firms has brought into existence not only strong sellers, as economists have supposed, but also strong buyers as they have failed to see. The two develop together, not in precise step but in such manner that there can be no doubt that the one is in response to the other" (p. 118).

Either may come first, of course, but the response relationship is basic to his theory. Nowhere does he offer any real evidence of this interrelationship. Rather he assumes it. Economists generally recognize that powerful sellers quite often find themselves confronted by powerful buyers, and that when they do their power may be compromised. But to assume that coexistence indicates a causal relationship is false and misleading. The American Can Company and the United States Steel Corporation illustrate this. Both arose out of the complex set of socio-economic forces that gave birth to the Great Combination Movement. Both were the handiwork of professional promoters aiming at power, but neither group of promoters had any notion of or interest in countervailing power. For organizing the Steel Corporation its promoters realized about $65 million; they also brought temporary stability to an industry threatened by "ruinous" competition. Professional promoters put together the American Can Company and obtained thereby virtually a monopoly of can making. Both concerns absorbed directly or indirectly over a hundred separate manufacturing firms. Industrial history affords no evidence that either of these concerns arose in response to the other. Both arose out of a common institutional framework, the complex web of which cannot be unravelled here.

But perhaps their common rather than their countervailing origin, important as it is to an understanding of the structure of the contemporary economy, would not matter so much to economists if their coexistence—the one as a seller of tin plate, the other as a buyer making tin cans—had brought the beneficial results which Galbraith imagines. It did not. For a quarter of a century after their organization, instead of bringing a compromise that protected canners and ultimately consumers, countervailing power brought secret price discriminations that placed independent can makers at a tremendous disadvantage in competing with the American Can Company. Because American Can as price leader in the industry tied the price of its cans to the price of tin plate, countervailing power meant higher prices for the hundreds of relatively small vegetable and fruit canners who had neither original nor countervailing power. It nowhere along the way protected the consumer. Other illustrations could be given, but this one makes the point.

The Great Atlantic & Pacific Tea Company and Sears, Roebuck are in some respects happier selections, but neither represents countervailing power in Galbraith's use of the term. That is to say, neither originated because of the existence of power on the other side of the market. On the contrary, both reflect the genius for organizational innovation of shrewd businessmen who saw a chance of turning an honest penny by doing for distribution what the captains of industry had a generation earlier done for mass production. And while no housewife or farmer is likely to complain of the services which these two great organizations daily perform, the myriad of small, powerless sellers who supply them with goods may have a legitimate quarrel with Galbraith for designating these two corporations as illustrations of countervailing power.

Nor does countervailing power always promise salutary compromise in the field of industrial relations. What of the recent steel strike, where stalemate in time of crisis brought unconstitutional seizure of the industry by a frightened and frustrated President? And this points, I believe, to the greatest weakness of Galbraith's analysis. He finds in countervailing power the last great hope for democratic capitalism. If English or German experiences or our own trends toward industrial and political concentration of power have any significance, it seems more likely that the power of private *economic* blocs invites, if indeed it does not demand, countervailing *political* power and perhaps their ultimate coalescence.

A business executive turned author, in commenting recently on public attitudes toward business, said: "What we need is more clear thinking straight from the heart." Mr. Lilienthal's book helps to meet this need. In approaching this subject he states his credo (p. 7; emphasis added):

> I believe that we should set about at once to re-examine the outdated structure of our *feeling*, our thinking and our public policy toward Bigness. We should . . . replace it with a foundation of *feeling* and of economic and legal policy based upon the realities of the mid-twentieth century. The times call for a *rousing* affirmation that Bigness can be made the means of promoting and furthering not only our nation's productivity but more important still the freedom and the well-being of its individual citizens.

In proselyting for his faith he has written an impressionistic account of the way in which big business serves society. It is an inspiring account, but it is neither profound nor precise. Mr. Lilienthal confuses big business with big industries; because we need the latter, he assumes that the former is indispensable (Pt. I, "A New Era of Opportunity": Ch. 1, "Feelings versus Facts About Bigness," particularly p. 8; and Ch. 3, "Big Business for a Big Country"). He attributes the prodigious productivity of the past decade to the imagination and daring of our business giants (Pt. III, "The Fruits of Bigness"), but in doing so ignores the expansionary influence of deficit spending by a nation fighting for its life. He is troubled by antitrust suits which tax the energy of business executives and divert them from their customary managerial functions (p. 104), but he fails to examine and analyze the issues and practices involved in the proceedings. In accrediting state regulation of oil production to the farsightedness of big business, he fails to discriminate between reduction of output to maintain prices and control of production to conserve resources (p. 129). He laments the government's suit against the "oil cartel," uncritically concluding before the facts have been established in a court of law that the defendants merely "sought to create some order in the development of world resources of oil, by a kind of production-consumption agreement that has long been recognized as essential" (p. 130). His "responsibility, as a public servant, for industrial operations" and his "study of areas outside" his "own direct experience" convinced Mr. Lilienthal that bigness is essential to high levels of production and low cost in the basic industries (p. 109), and he cites iron- and steelmaking as examples (p. 110); but apparently neither his sense of responsibility nor his study has led him to examine the hearings before the House Judiciary Subcommittee on Monopoly before which the president of the world's biggest steel company reluctantly unfolded a sorry story of the corporation's productive inefficiency and managerial ineptness in the quarter of a century before World War II.[2]

Believing that bigness is betterment, he has harsh things to say about our antitrust statutes, agreeing with Mr. Justice Holmes' privately expressed opinion that " 'the Sherman Act is a humbug based on economic ignorance and incompetence . . .' " (p. 168). Mr. Lilienthal concludes that if we can free ourselves from the shackles of our outworn notions, "Bigness can become an expression of the heroic size of man himself as he comes to a new-found greatness" (p. 204).

Mr. Lilienthal's book is not as confused and confusing as these criticisms suggest. It is an orderly expression of his convictions. It contains a good deal of common sense and shrewd observation. It tells us something about the "new competition" which is apparent to any careful observer of the contemporary scene—the competition of the new product, the better mousetrap, the new process, the improved organization. "In almost every aspect of our life the New Competition is providing us with a kind of 'competition . . . between the objects of desire' undreamed of in the days of the trust busters" (p. 65). It describes in an alluring manner the rôle of research in big enterprise and gives a graphic and succinct account of diversification and integration in modern business and their significance to competition.

Mr. Lilienthal's book is well written, inspiring, and provocative, but it does not dig deep in searching for the roots that may reveal the kind of socio-economic flower into which bigness may blossom.

Mr. Quinn is a successful businessman turned author and philosopher. The title of his book, *Giant Business: Threat to Democracy,* both suggests the nature of his preconceptions and foreshadows his conclusions. The book's subtitle,

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[2] "Study of Monopoly Power," *Hearings before subcommittee of Committee on the Judiciary,* U.S. House of Representatives, 81st Cong., 2d sess. (1950), Serial No. 14, Pt. 4A, "Steel," pp. 627 *et seq.,* esp. pp. 631, 639, 641, 643–46.

The Autobiography of an Insider, indicates how he came by his ideas. From humble beginnings he rose rapidly to the highest executive level in General Electric, holding when he resigned in 1935 a "top-ranking" vice presidency, the chairmanship of General Electric Contracts Corporation, and directorships in a half-dozen General Electric subsidiaries. He apparently was one of General Electric's "fair-haired boys" and was being groomed while in his early forties for the presidency when he chose to leave the company (Ch. 18).

His long experience on the inside of a "giant" corporation has convinced Mr. Quinn not only that big business cannot be justified on economic grounds but also that it constitutes a threat to democracy. General Electric, he alleges, owes its dominant position in the electric lamp field not to its comparative efficiency but to its having combined the leading lamp manufacturing companies and monopolized the patents indispensable to lamp making. As the only producer of lamp bases, General Electric could keep account of the sales of every manufacturer of lamps with whom it in effect divided the market and from whose business it derived a monopoly profit. "We owned and operated most of the machine and parts factories, which contributed to profits that sometimes ran as high as 40 per cent of our sales and higher . . . in relation to the investment" (p. 74). During the bleak 1930's General Electric's lamp business made profits sufficient to compensate for losses in all other departments (p. 125). No other lamp manufacturer was so fortunately situated. Although General Electric never exercised a similar domination over world markets, indirectly through International General Electric and its patent-licensing system it became a member of the international electric lamp cartel which governed the industry. Mr. Quinn not only concludes that competitive forces were hampered in making and selling lamps, but also challenges sharply the effectiveness of the research laboratories of big business as instruments of industrial progress. He concludes his discussion of the significance of the large research laboratories to industrial innovation with this sweeping and devastating generalization: "I know of no original product invention, not even electric shavers or heating pads, made by any of the giant laboratories or corporations, with the possible exception of the household garbage grinder. . . . The record of the giants is one of moving in, buying out and absorbing the smaller creators" (p. 117).

But it is the social and political significance of the giant corporations that most disturbs Mr. Quinn. He believes that they foster managerial ineptness, inhibit initiative, suppress talent, and frustrate ambition. They keep big men little and make little men big. And finally he believes that the failure of competitive free enterprise is paving the way for "the all-powerful socialistic state, a compromise of some kind with communism, or . . . dominating Big Business."

Some economists will find Mr. Quinn's book no more acceptable as an analysis of the causes and consequences of big business than I have found Mr. Lilienthal's. And Mr. Quinn's penchant as a businessman turned philosopher to philosophize about some of the most intricate economic phenomena that confront us, e.g., the causes and consequences of business fluctuations, may particularly trouble them. While recognizing the limitations of even a successful, thoughtful, and well-read businessman in generalizing on topics about which in an age of specialization not even some economists would care to speak, I find his book an engagingly frank and a profoundly discerning discussion of the significance of big business by an insider who quite generally knows what he is talking about.

To anybody reading either the Lilienthal or the Quinn book, I commend the other.

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Economics in the Public Service: Administrative Aspects of the Employment Act. By Edwin G. Nourse. (New York: Harcourt, Brace and Co. 1953. Pp. xi, 511. $6.00.)

Mr. Nourse provides his readers with an historical setting for the Employment Act of 1946, a detailed account of the operations of the Council of Economic Advisers and the associated congressional Joint Committee on the Economic Report, and reflections on the meaning and significance of the Act. The title of the book points to the main theme, and the subtitle indicates the data that are utilized to demonstrate the theme. His conclusion after the elaborate survey is to be found in the following sentences: "I do take an exalted view of what is potential in that statute. I believe that, with its declaration for private enterprise and governmental responsibility, with its call for a major state paper of integrated economic policy, with its staff of professional economists in the Executive office and its newly devised pondering committee (with trained staff) in Congress, it may translate a growing economic sophistication of our country into practical means of checking runaway boom, supporting incipient depression, and stabilizing high-level use of our resources to a degree comparable to our achievements in the field of technology."

The first hundred pages is devoted to sketching the background of policy developments in the economic field which enable Mr. Nourse to depict the Employment Act as the "capstone of such an arch of earlier and partial building stones." The novelty in the present legislation is that it is "an attempt to tie together and complete an arch of policy-making agencies or organizations, deriving its strength from all other members of the supporting structure."

After thus surveying the "philosophical background of national economic policy in the United States," the author describes the second part of his analysis in the following terms: "Perhaps I am carrying inductive empiricism too far, but it seemed to me more realistic to let the narrative of actual events unfold with no more of an 'apperceptive mass' in the mind of the reader than there was in the mind of the writer when he entered this field of action. . . . " This part, in accord with the stated thesis, gives a detailed and circumstantial account of the developments in the Council and its relations with the other governmental agencies. Mr. Nourse has done his best to give an objective story, and students of public administration and public policy have gained a document about the operations of a governmental agency that is of rare and substantial quality. There are moments, however, when the reader wishes that Mr. Nourse had been less restrained in his comments on his colleagues and fellow administrators. Enough is said to indicate that in operations under the Act a variety of views as to its philosophy came into being, and it is not too extravagant to suggest that the "objective" story must be a genteel version of a more complicated and intense struggle.

The final section provides the author's reflections on the experience under the Act. This summary is more often than not both penetrating and thoughtful. It is made clear that the Council, if the necessary implication is drawn, must have a synthesizing function in the executive branch in the various areas of economic policy. The application of that principle would compel a revision of many of the current operating habits of that branch.

Two requirements of that implication merit notice here. One delineates the administrative role that the Council would have to play, and the other describes the role as a formulator of economic policies which would be consistent in the multitude of agencies now working on economic matters. In Mr. Nourse's words: "Thus the work of a council of advisers on the problems of economic stabilization in any realistic sense would have to cover many questions of institutional structure and executive and mass behavior. . . . " These mild words signify nothing less than a revolution in administrative behavior in Washington.

Such sweeping changes would not be limited to the executive branch. If there is to be a unified economic policy, the Joint Committee on the Economic Report would have to move into a controlling position in Congress. The various subject-matter committees of that body, with their current perquisites and powers, would have to acknowledge the coordinating policy role of the Joint Committee. That kind of an integrating influence is about as far removed from the current power structure of Congress as it is possible to imagine. The present independence of committees in Congress has existed for a long time, and all efforts, even the mild 1946 legislation on congressional organization, to alter the pattern have been frustrated. This is not to say that such a change cannot be brought about, but it does suggest that the situation required for the successful functioning of the Employment Act does not now exist.

One would be hard put to ascribe any particular accomplishment to the Council in these early years, yet there has been a large body of literature relating to its activities. This volume supplements that literature in many useful ways.

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Community Power Structure: A Study of Decision Makers. BY FLOYD HUNTER. (Chapel Hill: The University of North Carolina Press. 1953. Pp. xiv, 297. $5.00.)

Several years of observation in the field of social work convinced Floyd Hunter that vital decisions affecting community life appear suddenly without any prior consultation with the majority of the community. His conviction that most power is exercised by a few is amply documented in this volume. Although his use of the term "power" is not confined to influence on governmental policy, and while he talks a lot about "community-planning" and "social work professionals," the book is still valuable to political scientists as a study of power.

His method was to make an on-the-spot study of a real community in the tradition of *Middletown*, *Democracy in Jonesville*, and Warner's *Yankee City* series. He employs the same techniques of extensive interviewing and the use of pseudonyms to protect the anonymity of the interviewees. The community chosen is a Southern city of nearly a half-million inhabitants. A tentative list of leaders was whittled down by asking those on the list such questions as "If a project were before the community that required decision by a group of leaders—leaders that nearly everyone would accept—which ten on this list would you choose?" By this procedure some twenty-seven persons were selected for interview and study. Among them there were large numbers of mutual choices, much close acquaintance, and overlapping business directorships.

No one man or family dominates the city as might be true of some small mill or mining town. However, basic decisions are made by a handful of men and then executed by a few hundred. There is no single power pyramid; rather Hunter finds several pyramids, each clustered around some business, whose members consult on policy. Once substantial agreement is reached by these decision makers, a project is definitely launched or killed. The test for admission to this circle of decision makers is a man's position in the business community. Hunter notes that as organized labor has grown in power it has secured more recognition, but none of its representatives has crashed the circle of decision makers. Basic decisions for the whole community are still made by the top men in the business community.

The policy makers reach a decision first; then the word is passed down to be implemented or talked about by lesser professional personnel, preachers, teachers, public relations men. The place of decision is rarely in the formal committee. The top men in the community have little time for committee meetings; they send a lesser man to "front" for them. The top leaders confer by telephone or perhaps meet at a private home to make the basic decisions. In their eyes, they are not behaving in an undemocratic fashion; they consult "everyone who counts," and it is possible for the membership of this group to change.

An excellent chapter describes the power structure in the Negro subcommunity. Here, more power is held by persons other than business leaders. Since Negro leaders have no contact above the third tier of white leaders, their viewpoints can never be presented at the level where the real decisions are made. Political power is examined in a separate chapter which explores the relations between the decision makers and elective officials at all governmental levels. Local officials are purely the creatures of the policy makers. The control of state officials is less absolute; only one leader is able to have the governor come to him rather than the reverse. The influence on the national level is limited to getting a prompt and respectful hearing before congressional committees.

The idea of such a study is not new to political scientists. Harold D. Lasswell has for twenty years been urging such an approach under the caption "elite analysis," but little heed has been taken of his advice. While a case study like this may not justify any generalizations about political behavior, it sets forth the power structure in one community with beautiful clarity, thereby strengthening or invalidating the existing theories on the subject and suggesting new hypotheses. For instance, our guesses as to the reasons for business's love for having power kept in the lower levels of government are brilliantly confirmed. The power of the business leaders is most absolute at the levels of government that are "closest to the people."

More studies of this kind would be a good thing for the profession.

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BOOK NOTES AND BIBLIOGRAPHY

AMERICAN GOVERMENT AND POLITICS

The Legislative Struggle: A Study in Social Combat. By Bertram. M. Gross. (New York: McGraw-Hill Co. 1953. Pp. xviii, 472. $6.50.)

Bertram M. Gross, in writing this volume, has drawn upon a rich background as staff adviser to various Senate committees and executive secretary to the President's Council of Economic Advisers. For many years he worked intensively on all sorts of legislative matters, at all stages of the slow-moving legislative process—from developing the ideas for legislation all the way to intimate involvement with problems of legislative strategy and tactics. He has had the satisfaction of seeing important bills in which he was thus involved approved by Congress. Stephen Bailey in his brilliant *Congress Makes a Law* shows what a decisive role a committee staff adviser (such as Bertram Gross) can play in the enactment of a law.

Throughout the volume the author indicates clearly his heavy reliance upon *The Process of Government* by Arthur F. Bentley who viewed the political process, of which lawmaking is a specialized part, as a group struggle for power. The underlying theme of *The Legislative Struggle* is a social combat in which the primary movers or "contestants" are three: private organizations, political parties, and government agencies. "The process of government is one of struggle as well as of cooperation."

In Part I of the volume, the author devotes two chapters each to the three actors in the legislative drama. The second chapter of each pair deals with proposals for reform which extend considerably beyond the legislative process. However, it is in Part II, "Combat on the Legislative Terrain," that the author makes a distinctive contribution to the literature of the legislative process. Congress in action is not analyzed as a problem involving the narrow description of rules, procedures, and organizational structures, but rather "for finding out how persons involved in the legislative process behave, claim to behave, or are expected to behave." Every phase of legislative action, enriched by illustrative data, receives attention, not as narrow and isolated steps but as tactical movements in the legislative struggle. This includes discussion of the initiation and sponsorship of a bill, its drafting, and campaigns to achieve enactment, and encompasses the formal organization of Congress and the presidential office, as well as the more informal but decisive outside pressures. The intimate and realistic explanations of action in the standing and conference committees and on the floor are extremely valuable. The author likewise gives a concise, keen, and critical presentation of significant avenues of procedural reform. With very broad sweeps of the brush, he concludes his study with a discussion of the prospects for change in the legislative process in the future, and of the role of social scientists in social change.—Belle Zeller, *Brooklyn College.*

Income Stabilization for a Developing Democracy: A Study of the Politics and Economics of High Employment without Inflation. Edited by Max Millikan. (New Haven: Yale University Press. 1953. Pp. xxi, 730. $5.00.)

In this stimulating and highly useful symposium, some fifteen economists, political scientists, and law professors, including seven from Yale University, explore the economic, political, and administrative problems in the promotion and maintenance of economic stabilization within the framework of a democratic society. The essays are designed to relate the policy of economic stabilization to other significant areas of economic policy, such as fiscal policy, taxation, monetary policy, public expenditure policy, public budgeting, and governmental influencing of private investment; and to examine "the limitations and conditions imposed on economic policy in any actual moment of history by the political, institutional, and social framework within which it must operate and by the developing trends and tendencies of the times." These two objectives establish the basic themes that run through the individual essays and give them a breadth and degree of comprehensiveness rarely found in discussions of economic policy. The authors are by and large agreed on two propositions: first, that the principal purpose of a stabilization program is to maintain the freedoms of the individual that would be lost if extreme fluctuations in the economy were not stabilized; and second, that the real advantages of a predominantly private market mechanism over alternative economic systems "depend on the degree to which the private enterprise system is free of elements of monopoly."

There is a strong temptation to suggest that political scientists should be most interested in the notable contributions made by their colleagues to this study. For example, Francis Coker presents an extremely useful review of the issue of governmental intervention in economic affairs in the light of American political tradition, while Victor Jones discusses ably and provocatively the political framework of stabilization policy and endorses responsible party government as the necessary condition of an effective policy of economic stabilization. Harold Lasswell examines the nature of the communications process and the uses of the tools of communication for implementing stabilization policies, and Thomas Emerson discusses the administrative problems of coordinating and directing a stabilization program and integrating its operations with other governmental and nongovernmental activities. While these and other essays can be read separately with profit, the unique value of this book lies in the comprehensive treatment of the noneconomic as well as the economic issues and problems in the field of stabilization policy. In the light of the current academic preference for dealing with the behavioral and nonpolicy aspects of government and other types of social organization, it is refreshing to read a volume devoted to an enlightening analysis of one of our most significant problems of public policy.—MARVER BERNSTEIN, *Princeton University.*

The Tidelands Oil Controversy: A Legal and Historical Analysis. BY ERNEST R. BARTLEY. (Austin: The University of Texas Press. 1953. Pp. viii, 312. $5.00.)

Considering the constant friction which has marked the relationship of the states and the national government since the Constitution was adopted, it is rather remarkable that no serious question as to the ownership of the marginal sea and the lands under it arose until the past decade or so. It was, of course, the discovery of valuable oil deposits in that area that brought about the clash, which has developed into one of the bitterest political issues of recent years. It is this controversy which Professor Bartley has traced from its inception to its present—but perhaps not final—phase.

The most impressive aspect of his work is his demonstration that until quite recently the title to submerged lands out to the "historical boundaries" was assumed to be in the states. Citing international law, federal and state cases, and federal legislative and administrative action, the author builds up a strong case with careful documentation. Even so redoubtable a fighter for the public interest as Harold Ickes is on record as having made such an assumption in the early days of the New Deal, although he later changed his mind.

After setting the stage, Professor Bartley proceeds to analyze the three Supreme Court cases concerning respectively the claims of California, Texas, and Louisiana, in which the traditional assumption was overthrown, and the national government was said to have "paramount rights" in the area, although the Court refused to go so far as to say that it had actual title. It is in this field that it seems to me the author is open to criticism. He seems unnecessarily to impugn the motives of the Truman Administration and the judgment and impartiality of the Supreme Court.

After all, the Supreme Court is concerned with more than sheer legalism; it is, for better or worse, involved with policy as well. Despite the impressive legal basis of the states' claims, the Court may honestly have been impressed with the government's claim based on international sovereignty—although Professor Bartley's reply to that is that state title has always been held subordinate to the authority of the national government within its constitutional powers. And strongly as the author argues for the states' contention that their control extends to their historical boundaries, he is just as firmly opposed to any claim beyond that, and he ridicules the efforts of Texas and Louisiana to fix their borders at twenty-seven miles from low tide.

Meanwhile a solution of sorts has been reached by the passage of legislation granting the states at least part of their claims. But in view of the Arkansas suit to test the validity of the legislation, it remains to be seen whether the end of the controversy has yet been reached.—J. H. LEEK, *University of Oklahoma.*

The Supreme Court: Vehicle of Revealed Truth or Power Group, 1930–1937. BY ALPHEUS THOMAS MASON. (Boston: Boston University Press. 1953. Pp. 58. $2.50.)

Three lectures, the Gasper G. Bacon Lectures for 1952–53, on the controversies over

Supreme Court personnel from the nomination of Hughes as Chief Justice to the "court-packing" controversy of 1937. The distinctive feature of the lectures is the extensive use of the letters of Justice Harlan F. Stone.

The States and the Nation. BY LEONARD D. WHITE. (Baton Rouge: Louisiana State University Press. 1953. Pp. x, 103. $2.75.)

This little volume of three essays, first presented by their distinguished author as the Edward Douglass White lectures at Louisiana State University, treats the ever recurring subject of federal-state relations under the following titles: "The March of Power to Washington"; "Strength and Limitations of the States"; and "The Next Quarter Century." In the concluding essay, Professor White proposes "four directions in which it may be possible to advance in order to achieve a new federal-state balance." These are: the return of some functions to the states; modification of the conditions attached to some federal grants-in-aid; wider use of the interstate compact; and more energetic use of state powers in emerging policy fields.

American State Government. BY W. BROOKE GRAVES. (Boston: D. C. Heath and Co. 4th edition. 1953. Pp. xi, 946. $6.25.)

Completely revised and reset in a new format, this edition includes three new chapters: "Legislative Service Agencies," "The Military Establishment and Civilian Defense," and "County and Municipal Government." It omits two chapters carried in the previous edition: "The Legislature in Action" and "The States in the War and the Postwar." Several chapters have been extensively rewritten. Reference lists have been shortened and bibliographical notes added, the *Model State Constitution* is no longer carried as an appendix, and the new edition is somewhat shorter than earlier ones.

Readings in Municipal Government and Administration. BY CHARLES M. KNEIER AND GUY FOX. (New York: Rinehart & Co. 1953. Pp. xix, 486. $3.90.)

The first collection of readings concerned solely with urban government to appear in a number of years. The selections run the gamut of modern municipal problems and consist of both documents and articles. The editors provide a brief explanatory introduction to each selection.

Public Administration. BY MARSHALL EDWARD DIMOCK AND GLADYS OGDEN DIMOCK. (New York and Toronto: Rinehart & Co. 1953. Pp. xix, 531. $5.00.)

An introductory textbook which stresses the study of public administration in the political and social setting. The authors have attempted a synthesis of a wide range of materials relevant to public administration. Case illustrations are frequently used. Although the effort to integrate diverse though relevant material results in some excellent and some weak sections, the total product is stimulating and provocative.

Public Administration. BY JOHN M. PFIFFNER AND R. VANCE PRESTHUS. (New York: Ronald Press. 3rd edition. 1953. Pp. viii, 626. $6.00.)

An extensive revision of a well-established textbook. Comparison with former editions shows not only the usual incorporation of recent knowledge but also a change in approach. There is an emphasis upon the total environment of public administration, more extensive use of relevant contributions from other disciplines, and an effort to achieve a balanced consideration of the formal and informal elements of organization and management.

Bibliography on Public Administration: Annotated. BY CATHERYN SECKLER-HUDSON. (Washington: The American University Press. 1953. Pp. vii, 131.)

This fourth edition contains over 1100 entries, with a brief annotation on each. Excluded are references to foreign language literature, individual articles in periodicals, and most of the related works on business administration. Emphasis is placed on national and international administration. Within the limits set, a useful volume of carefully selected references is again brought up to date.

Limited-Term and Excepted Appointments in the Civil Service: A Study of the Legal Provisions by Which They Are Regulated in Fifty-nine Jurisdictions in the United States. BY WILLIAM C. BEYER. (Philadelphia: William C. Beyer. 1953. Pp. iv, 186. $3.00.)

Primarily a reference study of legal provisions in fifty-nine jurisdictions in the United States (the federal government, 20 states, 6 counties, 30 cities, and 2 special districts), with data drawn from the civil service laws and rules in effect at some time during the period 1950–1952. The types of "non-regular," appointments considered are provisional, temporary, seasonal, emergency, and excepted.

Jurisprudence: Men and Ideas of the Law. BY EDWIN W. PATTERSON. (Brooklyn: The Foundation Press. 1953. Pp. xiii, 649. $7.50.)

A textbook, comprehensive in scope and detailed in analysis, purposely written for the intelligent novice.

The Federal Courts and the Federal System. BY HENRY M. HART, JR. AND HERBERT WECHSLER. (Brooklyn: The Foundation Press. 1953. Pp. lvii, 1445. $11.00.)

The Judicial Code and Rules of Procedure in the Federal Courts with Excerpts from the Criminal Code. COMPILED BY HENRY M. HART, JR. AND HERBERT WECHSLER. (Brooklyn: The Foundation Press. 1949. Pp. v, 454.)

A casebook for law school use with ample notes and historical material, and an accompanying selection of statutes and regulations.

American Life: Dream and Reality. BY W. LLOYD WARNER. (Chicago: The University of Chicago Press. 1953. Pp. xv, 268. $3.75.)

The author of the Yankee City series summarizes for the general reader his twenty years of research on community studies. With emphasis upon the social-status system, aspects of the modern American scene such as ethnic minorities, mass media, and the family are analyzed from what is called the point of view of social anthropology.

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A nontheoretical description of the actual practices of big business and of governmental measures which have been taken to control and regulate those practices.

The Statesmanship of the Civil War. BY ALLAN NEVINS. (New York: Macmillan Co. 1953. Pp. vii, 82. $2.25.)

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AMERICAN GOVERNMENT AND POLITICS

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FOREIGN AND COMPARATIVE GOVERNMENT

Law and Social Change in Contemporary Britain. By W. Friedmann. (London: Stevens & Sons, Ltd. 1951. Pp. xxiv, 322. 37s. 6d.)

The major purpose of this volume is to examine the impact upon British law and legal institutions of the rapidly changing social pattern of modern England, and particularly of the phenomena commonly called "economic planning" and "the Welfare State." It is primarily a study of English law—and as such draws most of its illustrative material from English cases and statutes—but it proceeds in the context of more general theories of jurisprudence and makes frequent reference to broader trends in Anglo-American law as revealed in the Commonwealth countries and in the United States. Comparisons with continental systems and practices are also made.

Over one-third of the book is devoted to an examination of the changing concepts of the law of property, contract, tort, and other basic common law principles, in an effort to reassess the function of these concepts in contemporary England. The law of property, says the author, has already changed sufficiently to sustain social democracy in Britain, and can no longer be called a citadel of a conservative and capitalist social order. A major problem is the restoration to the individual of some of the freedom of movement formerly derived from ownership, without restoring power to private capital. In the case of the law of contract, he shows that (despite Sir Henry Maine's famous dictum about progress from status to contract) the law of contract today tends more and more to be institutionalized and collective, rather than individual—that it is, in fact, coming to be more and more like public law. Similarly, in the realm of tort, the law has moved steadily closer to a social insurance principle in which the standards of care imposed on manufacturers, occupiers of land, and keepers of machinery, have been tightened and the range of acceptable defenses progressively narrowed. These analyses are interesting and challenging, especially for one who has had some legal training; but the major interest for political scientists probably lies in the remainder of the volume, concerned chiefly with (1) the growth of the acceptance of public law in Britain, (2) the evolution of administrative law as a part of this, (3) the increasing significance of statute law and statutory interpretation, and (4) the possibility of reconciling the "rule of law," properly understood, with the emergence of planning and the Welfare State.

Despite "Dicey's famous heresy," as the author calls it, it is no longer possible to deny that public law has an important and growing place in the English legal system. The flood of new social services, administrative agencies, and public corporations has created public law problems inevitably and increasingly, even though often in the guise of ordinary common law actions. Dicey's legal theory for the completely liberal state regarded the rules of private law as paramount and binding upon rulers and ruled alike, and hence could deny the existence of any "public" law over and beyond this. Professor Friedmann argues that the modern state must be concerned with the balance between social welfare and individual freedom; hence there must be a public law limiting administrative discretion so as to maintain a reasonable balance between the needs of administration and the legal security of the individual. In general, public law problems are seldom appreciated or recognized in their full importance in the common law setting in which they generally appear. And yet both courts and legislature in England are gradually abandoning the former presumption that doubts must be resolved in favor of the special protection of private rights. The predominant judicial attitude (shown in many cases reviewed in the volume) is coming to be one of balancing the interests concerned without any predisposition either way.

The evolving administrative law in Britain suffers from the basic weakness that it is a system of public law which still has to use the categories and remedies of a private law system. The author argues for a more general use of declaratory judgments and injunctions sought by the Attorney-General as guardian of the public interest, to replace penal sanctions and common law actions for damages. He also argues for the abandonment of the fiction of the "shield of the Crown"—already in process—and for establishment of the principle of legal liability of the state where there are state activities of a commercial, industrial, or managerial nature. Relevant to this is a thorough and stimulating analysis of the rôle of the public corporation and its legal status.

For an American, it is interesting to see that much effort is still required in England to demonstrate that statute law is important and a proper concern of the lawyer. The author attributes this to the lingering distinction between "lawyer's law" and "political law," the latter being somewhat remote and rather suspect in the eyes of the average lawyer. Whatever may have been the situation in the past, the fact now is that the overwhelming proportion of cases decided by the English courts is concerned with statute law and its interpretation. The author examines the various approaches to statutory interpretation, which he labels the "pseudo-logical or textbook," the "social policy," and the "free intuition" approaches. His analysis here adds little to the literature, and his conclusion—that none of these alone is sufficient—is not a particularly striking one. His most helpful contribution in this connection lies in his suggestion that "there are statutes and statutes," and that rules of interpretation might well be different for various defined categories of statutes.

The author concludes with a thoughtful chapter on the possibility of reconciling planning with the essential principles of law in a free democratic society. He discusses the various meanings of the "rule of law," attacking Dicey's misunderstanding of the administrative process and Hayek's revival of "Diceyism" in an exaggerated form. He shows that this concept of the rule of law really means rule by judges and the negation of administrative discretion. His conclusion is that the rule of law, reduced to its essentials, is at the heart of the survival of free democracy in the welfare state, and that "the incompatibility of planning with the rule of law is a myth sustainable only by prejudice or ignorance."—VINCENT M. BARNETT, JR., *Williams College*.

History of the German General Staff: 1657–1945. By WALTER GOERLITZ. TRANSLATED BY BRIAN BATTERSHAW. (New York: Frederick A. Praeger. 1953. Pp. xviii, 508. $7.50.)

This is a translation of *Der Deutsche Generalstab*, in which a contemporary German historian presents a detailed and factual narrative of the development and growth of the German General Staff from 1657 to 1945. He thus deals with an institution whose influence in Germany has not been paralleled by similar groups in other countries and an understanding of which is essential to a comprehension of the nature of the German problem. Dr. Goerlitz seeks to show that in both World War I and II, the politicians demanded of the German military leaders the undertaking of campaigns which the professional military men realized were beyond the social and political strength of the Reich. Their peculiar sense of "devotion to duty" induced them to undertake tasks which they knew were futile from the beginning. Powerful as the Officer Corps was and jealous of its independent position, it was eventually crushed by Hitler and became a dependent unit within the National Socialist system. The remnants of the Officer Corps who survived became in due time, if not willing, at least loyal instruments for the furtherance of the grandiose schemes of the Third Reich. The author defends the General Staff against the accusation that it deliberately caused

World War II, maintaining in this respect that the Nuremburg tribunal was never able to find evidence sufficient to prove a case against the generals.

With the proposed integration of Western Germany into a European defense system, it is essential that we understand the psychological motivations of the remnants of the officer class on whom the new German army will of necessity have to be built. Dr. Goerlitz's book gives the reader such insight, and although the conclusions to be drawn from the data by others may differ from those of the author, the factual knowledge presented is of undoubted value to those concerned with the future of a revived Germany.—H. Malcolm Macdonald, *University of Texas.*

Printer to the House: The Story of Hansard. By J. C. Trewin and E. M. King. (London: Methuen & Co. 1952. Pp. xv, 272. 22/6.)

Hansard's Catalogue and Breviate of Parliamentary Papers: 1696–1834. Reprinted in facsimile. With an Introduction by P. Ford and G. Ford. (Oxford: Basil Blackwell. 1953. Distributed in U. S. by Macmillan Co. Pp. xv, viii, 220. $6.50.)

Select List of British Parliamentary Papers: 1833–1899. By P. Ford and G. Ford. (Oxford: Basil Blackwell. 1953. Distributed in U.S. by Macmillan Co. Pp. xxii, 165. $4.50.)

Luke Hansard, as printer to the House of Commons in the latter part of the 18th century and in the first part of the 19th, did much to establish the tradition of promptly and effectively printed parliamentary papers. His further ability to keep an intelligent working control over the stocks of papers at the service of the members of Parliament as well as to prepare some important indexes would seem to have aided materially in the conduct of parliamentary business during a long and rather critical period. The term *Hansard* as applied to parliamentary debates arose from the taking over by his son, Thomas Curson Hansard, of the publication of *Cobbett's Parliamentary Debates.* The story of the Hansards, told on the 200th anniversary of Luke Hansard's birth, may do much to show how closely the matter of official printing has at times been intertwined with and has affected the conduct of parliamentary business.

Hansard's *Catalogue and Breviate,* planned by Luke Hansard, completed by his sons, Luke Graves and James, and printed for the House of Commons in 1836, demonstrates even today a complete mastery of these documents such as was possible only to those so intimately connected with the printing and use of the papers. The Hansards were not merely printers to the House but served as a source of information on the papers. In making this work available once more in reprint form, the editors have added a list of House of Lords papers to which references were not made in the original work.

For "the papers of inquiries into the whole field of constitutional, economic and legal policy," 1834–1899, P. and G. Ford have provided a classified index. At the end, there is a separate class for the Irish reports. An appendix is devoted to a "select list of annual reports." Although in the main the references are given only to the House of Commons sessional papers, references are made to the House of Lords papers when these were not presented to the Commons. The P. S. King and Son's *Catalogue of Parliamentary Papers* does not give paper and volume numbers. The sessional and general indexes are far from uniform in their treatment of the many thousands of papers bound in the several thousand volumes for the period. For the first time, therefore, we have one key to most of the important British parliamentary papers during the period 1833–1899.

The *Select List of British Parliamentary Papers, 1833–1899,* together with *Hansard's Catalogue and Breviate of Parliamentary Papers: 1696–1834,* and *A Breviate of Parliamentary Papers, 1917–1939* (1951), provide a key to the important British parliamentary papers, 1696–1939, with the exception of the period 1900–1916, which P. and G. Ford propose to complete next.—James B. Childs, *Library of Congress.*

English Historical Documents: Volume VIII, 1660–1714. Edited by Andrew Browning. (New York: Oxford University Press. 1953. Pp. xxxii, 966. $17.50.)

This is the second published volume of *English Historical Documents.* It is fully up to the standard set by Volume II and contains a rounded picture of all aspects of life in Great Britain during the late Stuart period. It should serve as an indispensable tool for the student of the period.

The Concept of Empire: Burke to Attlee, 1774–1947. Edited by George Bennett. (London: Adam and Charles Black. 1953. Distributed by The British Book Centre, New York. Pp. xix, 434. $4.00.)

The sixth volume of this series on the *British Political Tradition* contains useful and hard-to-find commentaries on colonial policy taken from monographs, articles, speeches, and documents.

Politics in the Age of Peel: A Study in the Technique of Parliamentary Representation, 1830–1850. BY NORMAN GASH. (New York: Longmans, Green and Co. 1953. Pp. xxi, 496. $8.75.)

This is not a history but rather an examination of the political life and political practices of the two decades following the Great Reform Bill. Peel is merely a central figure; the primary emphasis is on the electoral and representative system. Valuable commentary on the constituencies, corruption, patronage, and the techniques of political control make this a useful volume for students both of British government and of electoral problems in general.

The Navy as an Instrument of Policy: 1558–1727. BY ADMIRAL SIR HERBERT RICHMOND. EDITED BY E. A. HUGHES. (New York: Cambridge University Press. 1953. Pp. 404. $12.00.)

Richmond was both an admiral and a Cambridge professor. His history is not of the Royal Navy itself but of the political and strategic role of the Navy in the period covered.

The Temper of Western Europe. BY CRANE BRINTON. (Cambridge: Harvard University Press. 1953. Pp. ix, 118. $2.50.)

An urbane historian takes a long view, says that the prophets of doom exaggerate, finds Western Europe materially richer than and not too lamentably changed from thirty years ago, and considers its current temper far more youthful than senile. The volume is based on the James W. Richard Lectures in History, given in April, 1953 at the University of Virginia.

The Government of the Soviet Union. BY S. L. KATARE. (Jabalpur: The Indian Book House. 1952. Pp. xii, 235. $2.50.)

A description of the Soviet government on federal, state, and local levels by an Indian professor of history and political science who claims to be opposed to both communism and capitalism. Based largely on secondary materials, it is designed as a textbook for Indian students.

The Impact of Russian Culture on Soviet Communism. BY DINKO TOMASIC. (Glencoe, Illinois: The Free Press. 1953. Pp. 285. $4.50.)

In an endeavor to find the "social agents which have affected the formation of power and the growth of personality in Russian society and which might be the causes of its political explosiveness," the author traces the development of Russian society from its origins among the Pripet marshes and the early Mongol-Tartar invasions to the USSR. He discusses such items as the contrast and clash of the Mongolian "power-oriented and predatory warriors of the steppes" and the "group-oriented and anarchistic culture of the Old-Slavonic soil cultivators," the impact of the Byzantine politico-religious system, the mutual relationships within the Russian family, and various social groups and revolutionary movements.

Germany in Power and Eclipse: The Background of German Development. BY JAMES K. POLLOCK AND HOMER THOMAS WITH THE ASSISTANCE AND COLLABORATION OF WILLETT F. RAMSDELL, WM. CLARK TROW, AND MANFRED C. VERNON. (New York: D. Van Nostrand Company. 1952. Pp. viii, 661. $10.00.)

During World War II a team of social scientists at the University of Michigan, headed by Professor Pollock, made a series of comprehensive studies of Germany, which were made available to the U.S. War and State departments. The volume noted here—in essence a handbook—is a summary of the results of the most important of these investigations. It deals with such matters as the land, the people, government and administration, political movements and parties. The longest part is the one on the regional composition of Germany.

State and Local Government in West Germany, 1945–1953, with Special Reference to the U.S. Zone and Bremen. BY J. F. J. GILLEN. (Berlin: Office of the U.S. High Commissioner for Germany. 1953. Pp. ix, 131.)

This useful monograph deals fully with state and local government in Bavaria, Hesse, Wuerttemberg-Baden, and Bremen from 1945 up to the end of 1952. A final chapter briefly surveys state and local governments in the British and French zones.

Anais de Câmara dos deputados. Organizados pela Diretoria de publicidade. 1946, Vols. I–VIII; 1951, Vols. I–VII; 1952 (Convocão), Vols. I–VII. (Rio de Janeiro. 1951–53.)

Although the Chamber of Deputies of the Brazilian Congress first met September 23 after the approval of the 1946 Constitution a few days earlier, it was only beginning in 1951 that some of the volumes of the permanent edition of the debates in octavo started to appear under the title of *Anais*. Normally the Congress meets each year on March 15th and sits until December 15th. The eight volumes of 1946 extend through the beginning of the extraordinary session on December 16. The seven volumes of the ordinary session of 1951 begin in March and extend through May 21. The seven volumes of the called session of 1952 begin on January 16 and extend to the end of the session on March 9. Each volume contains at the beginning a day by day table of contents of the sittings and an index by members. The volumes of the 1946 and 1951 sessions were printed at the Departamento de Imprensa Nacional, and those of 1952 at the Serviço gráfico do Instituto brasileiro de geografía e estatística. The above mentioned volumes are all that have been printed to date. The daily unindexed congressional record of the debates in both houses of the Brazilian Congress appears as a supplement to the *Diário oficial* under the title *Diário do Congresso Nacional.*—J.B.C.

Manual do deputado: Regimento interno da Câmara dos deputados e Constituiçao da República. (Rio de Janeiro: Depto. de Imprensa Nacional. 1953. Pp. 188.)

The new rules of the Brazilian Chamber of Deputies, as approved on December 31, 1952, are accompanied by a detailed index. The volume also includes the *Regimento comum*, rules for the joint sessions of the Senate and Chamber of Deputies approved April 20, 1951, and the 1946 Constitution of the Republic.—J.B.C.

Asamblea nacional constituyente de 1949. Tomo I: *Antecedentes, Proyecto, Reglamento, Actas.* (San Jose, Costa Rica: Imprenta Nacional. 1953. Pp. 675.)

This work represents the first time in the history of Costa Rica that there has been an attempt at a full and systematic printed record of a constituent assembly. Ordinarily the only record available is that printed from time to time in the *Diario oficial.* The present volume includes the proceedings from the beginning on Jan. 15th to April 8, 1949.—J.B.C.

Almanak nasional. 1953. Tahun ke—III. (Djakarta, Gapura: N. V. 1952. Pp. 400. Rp. $8.50.)

This annual general almanac of Indonesia published in the Indonesian language by the firm of Gapura seems to be the only work containing a full list of the ministries and other agencies of the Republic of Indonesia and also the membership of the parliament.—J.B.C.

India, a Reference Annual, 1953. By Ministry of Information and Broadcasting, Government of India. (Delhi: Publications Division, M.I.B. 1953. Pp. 423. Rs. 5.)

A considerable section is included on the returns of the first election held between October, 1951 and May, 1952 under the new constitution for both the central government and the states. There is a brief directory of the governments, both central and state. A ten-page summary of the new constitution is given. The judicial system, defense services, finance, power and irrigation, agriculture, scientific research, and other topics each have separate chapters that are helpful in presenting the present situation of the government of India and its problems.—J.B.C.

Democratic Bulwark in the Middle East: A Review and Analysis of Israel's Social, Economic, and Political Problems during the Period from 1948 to 1953. By Joseph Dunner. (Grinnell, Iowa: Grinnell College Press. 1953. Pp. v, 37. $1.35.)

The Republic of Israel: Its History and Its Promise. By Joseph Dunner. (New York: McGraw-Hill Book Co. 1953. Pp. xvi, 269.)

The Republic is a reprinting of a 1950 volume and *The Democratic Bulwark* brings the Israel story down to 1953 with a consideration of internal population and constitutional changes, the continuing Arab problem, and Israel's foreign policy.

Civil Service in Early Sung China: 960–1067. By E. A. Kracke, Jr. (Cambridge: Harvard University Press. 1953. Pp. xv, 262. $6.50.)

This study in the Monograph Series of the Harvard-Yenching Institute describes civil service developments during an important period of Chinese history, with particular emphasis on "the policy of promotion through controlled sponsorship." "This technique," the author points out, "consisted in granting special promotions within the service on the recommendation of a superior officer, who thereafter was legally answerable for the quality and the acts of his protégé."

Reader in Bureaucracy. Edited by Robert K. Merton, Ailsa P. Gray, Barbara Hockey, and Hanan C. Selvin. (Glencoe, Ill.: The Free Press. 1953. Pp. 464. $5.00.)

A useful collection of "various types of analysis of bureaucracy" under the following sectional titles: "Bureaucracy: Theoretical Conceptions"; "Bases for the Growth of Bureaucracy"; "Bureaucracy and Power Relations"; "The Structure of Bureaucracy"; "Recruitment and Advancement"; "The Bureaucrat"; "Social Pathologies of Bureaucracy"; and "Field Methods for the Study of Bureaucracy." A brief introductory statement preceding each section indicates the problems of chief concern in that section. In choosing materials for inclusion in the *Reader*, the editors have emphasized the sociological aspects of bureaucracy and have given greater attention to governmental than to economic, military, or religious bureaucracy.

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WILLIAM H. ROBERTS

Catholic University of America

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INTERNATIONAL LAW AND RELATIONS

Truth is Our Weapon. By Edward W. Barrett. (New York: Funk and Wagnalls. 1953. Pp. xviii, 355. $4.00.)

Few programs of our government have sustained such demoralizing public attack as has our international propaganda program. The European field investigation of our library centers by Messrs. Schine and Cohn is still fresh in mind as is the public dissection of the Voice of America. This series of probes has left the information program very much in need of some forthright championing. Such is the purpose of Mr. Barrett who was formerly, as Assistant Secretary of State, in charge of our cold war propaganda. The product is a readable discussion of the importance, techniques, and organization of our efforts toward selling America to the world. It is not a scholarly history or critique, nor is it intended as an addition to the technical literature on psychological warfare or international propaganda. It, nonetheless, deserves a reading by specialists in foreign policy and congressional-administrative relations, as well as by students of mass communication.

The author shows commendable restraint in devoting only a minimum of attention to Senator McCarthy's charges. Most of the argument consists of a positive discussion of the necessities of an information program in the face of an enormous Soviet propaganda barrage. Barrett does not offer psychological weapons as a cure-all for all our ills. There is genuine awareness that we cannot simply transfer our expertise in selling chlorodent in Des Moines to peddling liberty in Southeast Asia. Fortunately, Barrett says, "ballyhoo experts gave way to area experts" some time ago. That "this is a war for the minds and hearts of men" has become a part of our everyday speech.

The author, who at the time was engaged in top level work in the Psychological Warfare Branch of the Eisenhower headquarters, draws upon his experiences to show the utilization of "Sykewar" in World War II. While he strives mightily to restrain his enthusiasm, he occasionally claims more than communication analysts have found conclusive evidence for. Thus, his account of the impressive handling of the Japanese surrender offer by O.W.I. is somewhat marred by the decisive way in which he evaluates the effect of that leaflet operation. "That cinched the surrender, which became official two days later" (p. 14). Much credit must, however, be given to those, such as the author himself, who played by ear during the trial and error days when much had to be done quickly. The experiences of that period are recounted and drawn upon for relevance to present cold war psychological strategy. And if Barrett's discussion of our strategy in supporting Admiral Darlan and our demand for unconditional surrender is meager, he does succeed in pointing up the psychological aspects of such decisions.

His discussion of the problems we must solve in our current war of words with the Kremlin is much more satisfactory. Especially valuable is the bill of particulars which goes far to refute the all too common view that we are losing the cold war. Far too many have succumbed to the myth of Russian invulnerability reminiscent of that built up about the Nazis. There is some consolation to be drawn from the case Barrett establishes. One example cites the three-power disarmament proposal which President Truman offered the United Nations. The discussion of the propaganda strategy that went into that offer and how the requirements of a "Truth Campaign" influenced that strategy is worth the telling. The success of that psychological weapon was heightened by Vishinsky's blundering response that he had been unable to sleep for laughter. A good psychological warrior such as Mr. Barrett could have informed him that one does not laugh at disarmament proposals, at least not in public.

Despite this and other successes which are recounted, the author fails to come to grips with the less favorable elements in the current scoreboard of cold war psychological battles. There is no consideration of the gains of "neutralism" in Europe and, most alarmingly, in Britain. The discussion of the Malenkov "peace overtures" does not go quite far enough. It is all well and good to be alert to the semantics of saying "no" in good psychological warfare terms. Thus, we can see the need for Mr. Dulles' elaborate caution in saying "No" affirmatively so as not to appear undesirous of peaceful compromise and yet keep up our guard in the face of another Soviet propaganda ruse. But this hardly begins to represent a policy which must convince skeptical millions that America and not the Soviets represents the best hope for peace, for economic well-being, and for an end to colonialism and racial discrimination.

So far as the organization of a propaganda agency is concerned, the author regards its proper place as with the military in time of war (i.e., combat operations) and keyed in with the State Department in time of peace. In war or peace, he is a firm supporter of a propaganda coordinator on the President's staff. As he points out, the evaluation techniques which we possess are such as to make a sober appraisal of the effectiveness of our "set-up for persuasion" very difficult. Given the political differences which prevail over foreign policy, as well as the unsolved technical problems, it would not be surprising to discover that we have blundered as well as advanced our cause. Yet the record seems one of which the propaganda agencies can be proud. The author is not seeking to escape responsibility for errors committed during his tenure when he complains of his program being made into a political football. "Indeed, one of my chief regrets is that I, like my predecessors, was forced to spend more effort on this struggle than on the contest with Soviet propagandists" (p. 80).

The publisher is to be congratulated for the inclusion, despite a lengthy text, of valuable appendices; one of them is a lengthy reply to detailed questions submitted to the Information Service by Senator McCarran, as chairman of the subcommittee on State Department appropriations. Also reprinted is the text of a "Typical Country Plan . . . a hypothetical plan to illustrate the approach used by the U. S. Information Services in tailoring the information program to a target country." Several photographs illustrate various items of psychological warfare.—HERBERT GARFINKEL, *Dartmouth College.*

Challenge to the Kremlin. By HARRY HODGKINSON. (New York: Frederick A. Praeger. 1953. Pp. 190. $2.75.)

This book underscores the primary importance of ideologies in the struggle between Tito and the Kremlin. Published some time before the death of Stalin, and brilliantly analyzing the late dictator's views in several crucial areas relating to the internal and foreign affairs of the Soviet Union, it is also suggestive with regard to current Soviet policies now that Stalin has passed from the scene.

The author hammers home the importance of the multiple repercussions of the Tito-Stalin rift within the Communist world. Titoism revealed to all that under Stalin the ideas of Marx as interpreted by Lenin were being radically altered to produce a monolithic state party domination at home, and a Russian imperialism (under the façade of liberating the proletarians of all lands) abroad. Regardless of the present or eventual effect of Tito's example upon the loyalty of other Communist countries to Moscow, the challenge to the Kremlin's domination of the Communist world, has, in one sense, been successful. Moscow, despite its ruthless pursuit of "Titoist wreckers" all over the world, particularly in eastern Europe, must operate under the glare of Tito's charges that Stalin strayed from the path of true Marxism-Leninism. And any diplomatic adjustments that are made between Russia and Yugoslavia, now that Stalin is dead, must appear to be concessions to the Yugoslavian dictator's position.

Hodgkinson indicates how Yugoslavia's relations with the West during the past five years constitute a refutation of the still basic post-World War II Russian idea that the world is divided into two irreparably hostile camps. Tito, despite Moscow invectives, has demonstrated how a Communist state can carry on correct, if not the friendliest, relations with capitalistic United States, thus securing needed economic assistance not obtainable elsewhere while maintaining its presumed socialist character. This must be a severe lesson, indeed, to those Russian satellites whose overtly expressed hopes of participation in the original Marshall Plan were squelched by Moscow.

Another result of the Tito-Kremlin conflict has been the establishment in Yugoslavia of what the author terms "laissez-faire communism," or "a sort of socialism without the state." The author indicates that the charges of the Yugoslav leaders against the Soviet Communist Moloch state made it all the more necessary that they themselves seek to eliminate the evils of centralized political bureaucracy. It will seem to some that the author is too optimistic concerning the progress that Yugoslavia has made in this direction. "Laissez-faire communism" may be realized some day in that country. If it is, however, the world will have witnessed the spectacle of a Moscow-trained Yugoslavian Bolshevik who successfully defied the Kremlin partly because he applied the ruthlessness he learned against his former teachers, uniquely turning Marxism-Leninism upside down.—CARROLL HAWKINS, *Michigan State College.*

Who Speaks for Man? By NORMAN COUSINS. (New York: Macmillan Company. 1953. Pp. x, 318. $3.50.)

This book is based upon the conviction that the USA and the USSR are about to repeat the fatal cycle which led Athens and Sparta to destroy ancient Greek civilization. They did it because they had no way of preventing the final error of one war too many. This tragedy was preceded by the golden age of Pericles, in which he made male citizenship universal and used public money to build Athens into "the most beautiful city the world has ever known." Then came the war and his death, after which "every form of iniquity took root in the Hellenic world," according to Thucydides. The military took control in Athens and the wise precepts of Pericles were not only disregarded: they "hadn't even been remembered."

Cousins believes that men will always come to similar catastrophe unless there is a single government over the geographic unit in which they live and that the earth is now such a unit. The problem is not to unite the two super powers but to get a degree of world government which will keep them *apart*, not to make the world safe for either ideology, but to make it safe for diversity.

This can only be done, the author holds, by a strong initiative on the part of the United States to give the UN real governmental powers, sufficient to offer Russia, and all nations, reliable security against armed aggression. There would be a single world *sovereignty*, but state *jurisdiction* over everything except the war-making power.

No one can deny the necessity of such a development. The new atomic weapons clearly confront us with the imminent destruction of Western civilization, according to the rule that great powers must fear and fight, with whatever weapons they can lay hands upon. The only question left is whether to make a desperate effort to reduce the tensions between the Big Two before attempting to move toward world government.

Prime Minister Nehru, of India, who contributed a long recorded interview to the book, believes that this must come first. Since "today fear is almost all-pervasive," he holds that our primary task is to lessen tensions and reduce fear.

This has seemed to this writer to be the most urgent imperative ever since the cold war boiled up. The war must be prevented. Then everything else is possible. However, Cousins makes a strong case for putting a bold move for world government first, as the indispensable means of preventing the war. He has an impressive chapter showing that men all around the world, of all races and cultures, already hold common basic beliefs. More than any rabid nationalist suspects, man is already one. But "who speaks for man?"

The book contains significant reports of two official missions by the author to Germany and Japan. There are unforgettable accounts of the degradation forced upon men in the Nazi murder camps, and of the refusal of present Germans to admit that they had any conceivable responsibility for these horrors, or for Nazism itself. He found Germany becoming "the principal means in Europe for priming the pump of war between the West and Russia." But the Mayor of Hiroshima told him that "we the people of Hiroshima are sick at heart to look out at the world and see that nations are already fighting the initial stages that can grow into a full war."

By all past precedents the war will come, after the atomic weapons have made the death of Western civilization certain. *Who Speaks for Man?* is one man's attempt to avert that supreme disaster.—D. F. FLEMING, *Vanderbilt University*.

The Ultimate Weapon. BY OLEG ANISIMOV. (Chicago: Henry Regnery Co. 1953. Pp. xvii, 163. $3.50.)

By the "ultimate weapon" the author (formerly of Latvia) means the "militant democratic internationalism which submerges petty national differences and false pride in behalf of the dignity and survival of the individual." He is greatly dissatisfied with the way the United States has been handling its psychological warfare, one of his main objections being that the U.S. expends too much energy to prove that life is better in America but does not say what it proposes to do to help the oppressed peoples. "No democratic revolutionary movement is possible behind the iron curtain without revolutionary forms of American political action." Hence the author recommends a new strategy which would boldly take advantage of discontent and of the "dormant moral strength" behind the Iron Curtain. Among other things he suggests the "creation of a permanent veto-free system" in the U.N., some sort of democratic-sponsored world organization which would be "a counterpart to the Cominform," creation of "revolutionary cadres among the Soviet escapees and the issuing of daily information, advice, and instructions to the anti-Communists behind the curtain," and establishment of "small anti-Communist cells" in all parts of the Soviet-dominated world. The book also contains an interesting discussion of the psyche of the average Soviet citizen, based on the author's own observations and experiences in Russia and among Russian POWs and on an analysis of Western European attitudes bearing on the cold war.—EDUARD TABORSKY, *The University of Texas*.

Documents and Speeches on British Commonwealth Affairs: 1931–1952. EDITED BY NICHOLAS MANSERGH. (London, New York, Toronto: Oxford University Press. 1952. 2 vols. Issued under the auspices of the

Royal Institute of International Affairs. Pp. xli, 604; xvii, 605–1308. 84s. net.)

These volumes are a rich addition to the growing collection of documentary and interpretative works on the empire-commonwealth issued by the Oxford University Press. Professor Mansergh has recently published a supplement to Hancock's *Survey of British Commonwealth Affairs* and the present collection serves as a sequel to Berriedale Keith's similar collection for the years 1918 to 1931. The speeches and documents here assembled bring the story from the Statute of Westminster, 1931, to the present day. Their inevitable emphasis is on constitutional matters but extensive materials on foreign and defense policy, financial stability, and economic development are also included.

World Population and Production: Trends and Outlook. BY W. S. WOYTINSKI AND E. S. WOYTINSKI. (New York: The Twentieth Century Fund. 1953. Pp. lxxii, 1268. $12.00.)

Replete with tables, maps, and graphs, this book gives in elaborate detail the present condition of man in relation to the economic aspects of his environment, and indicates possible developments in the future. Most of the figures include generous samples from the past, thereby lending historical perspective to the view, and division of the statistics along geographic and national lines affords the basis for a comparison of region with region, country with country. The contents are arranged in five major divisions, *viz.*, Man and His Environment, World Needs and Resources, Agriculture, Energy and Mining, and Manufactures.

Der Diplomatische Dienst: seine Geschichte und Organisation in Frankreich, Gross britannien, und den Vereinigten Staaten. BY RICHARD SALLET. (Stuttgart: Deutsche Verlags-Austaet. 1953. Pp. 368.)

This is a meticulous, detailed, and carefully documented description and explanation of the diplomatic services of the countries named. It is intended to inform its German readers and lead them forward in the creation of a new diplomatic service of their own. Needless to say, it provides a wealth of useful information for American readers. The author has had sufficient experience with Nazi Germany, with England and France and the United States—including Harvard College—to give him both a detached outlook and an intimate understanding of the things whereof he writes.—P.B.P.

Ventures in Diplomacy. BY WILLIAM PHILLIPS. (Boston: The Beacon Press. 1953. Pp. xxv, 477. $5.50.)

No secrets are revealed, but thoroughly fascinating are these informal recollections of a man whose public career began in 1903 as secretary to the American Ambassador in London (Joseph Choate) and ended as a member of the Anglo-American Committee of Inquiry on Palestine. In the intervening years the author served as, among other positions, Assistant Secretary of State during the first World War, Minister to Holland, Under-Secretary of State during the Coolidge Administration, Ambassador to Belgium, Minister to Canada, Under-Secretary again from 1933 to 1936, Ambassador to Italy, director of OSS in London, the President's Personal Representative in India in 1943, and political adviser with SHAEF. The concluding few pages contain some wise advice for would-be foreign service officers.

The United States in World Affairs: 1952. BY RICHARD P. STEBBINS. (New York: Harper & Bros. 1953. Pp. xiv, 492. $5.00.)

Documents on American Foreign Relations: 1952. EDITED BY CLARENCE W. BAIER AND RICHARD P. STEBBINS. (New York: Harper & Bros. 1953. Pp. xv, 391. $5.00.)

The Council on Foreign Relations' annual volume is an admirable and well-written survey of a year full of the usual crises and alarms and marked by two other events of international significance—the U.S. presidential elections in which foreign affairs were a major topic, and the Nineteenth Congress of the Communist party. The final chapter, "NATO in the Doldrums," reflects concern over the apparent dwindling of the common purpose shared by the Western allies. The volume is also available in text edition.

The book of documents covers most of the subjects considered in the survey volume, and is organized in topical fashion for handy reference.

International Relations: Basic Documents. BY ELMER PLISCHKE. (New York: D. Van Nostrand Co. 1953. Pp. xii, 194. $2.95.)

Over 200 documents provide illustrative material for the various customary divisions of the international relations course; a number of charts show the organization of foreign offices, the UN, international conference delegations, etc.

Year Book of the United Nations. 1952. (New York: Columbia University Press in cooperation with the United Nations. 1953. Pp. ix, 981. $12.50.)

This sixth annual yearbook, handsomely prepared, summarizes the UN's history from 1946 and presents a detailed report of its activities in 1952. These activities are now conveniently presented under subject-headings covering the whole organization.

How Nations See Each Other: A Study in Public Opinion. BY WILLIAM BUCHANAN AND HADLEY CANTRIL. (Urbana, Ill.: University of Illinois Press. 1953. Pp. ix, 220. $5.00.)

The results of a UNESCO-sponsored poll in nine countries testing opinions—as well as national variations—on such questions as the possibility of world peace, the acceptance of a supranational world government, and the people for which the most and least friendliness is felt.

Fédération Internationale: Idées D'hier—Possibilités de demain. BY LASZLO LEDERMANN. (Neuchatel, Suisse: Editions de la Baconniere. 1950. Pp. 174.)

A lucid essay-like and highly readable small volume by a lecturer at the University of Geneva who is a staunch partisan of federalization as a means of facilitating the solution of many major world problems. It includes comments on the federal ideas of Saint-Simon and Proudhon and, by way of contrast, on those of the German Constantin Frantz, as well as a brief and rather superficial review of a number of federal and quasi-federal arrangements of the past.

The United States and Italy. BY H. STUART HUGHES. (Cambridge: Harvard University Press. 1953. Pp. xi, 256. $4.00.)

A condensed survey discussing the land and the people, the recent history, the legacies of Mussolini, the consequences of war, the struggle with social, economic, and political problems since 1945, and, in conclusion, the election of June, 1953. As with other books in the American Foreign Policy Library, U.S. relations are dealt with only briefly.

The South Seas in Transition: A Study of Post-War Rehabilitation and Reconstruction in Three British Pacific Dependencies. BY W. E. H. STANNER. (Sydney, Wellington, London: Australasian Publishing Co. 1953. Pp. xiv, 448. $6.00.)

Sharp comment on the Western approach to "development" in non-Western lands concludes this exhaustive report on rehabilitation and reconstruction in the British Pacific dependencies of Papua-New Guinea, Fiji, and Western Samoa. The manuscript was completed in 1947 but essential additions have been made through 1950.

Soviet Policy in the Far East: 1944–1951. BY MAX BELOFF. (London, New York, Toronto: Oxford University Press. 1953. Pp. vii, 278. $4.00.)

A careful compilation and analysis of available information by an English historian who allows himself only the most tentative of conclusions as to what "plan" the Soviets may have had for the Far East, and to what extent events in the Far East really may be traced to Soviet influences.

What Price Israel. BY ALFRED M. LILIENTHAL. (Chicago: Henry Regnery Co. 1953. Pp. viii, 274. $3.95.)

An American of Jewish faith insists upon the need to distinguish among Jews, Zionists, and Israelis; the first are members of an organized religion, the second sought the creation of a national state for Jews, and the third are nationals of that state. Not all Jews are Zionists, and the author is concerned about the possible consequences if American Jews forget the obligations of American citizenship in their enthusiasm for Israel.

Struggle for Africa. BY VERNON BARTLETT. (New York: Frederick A. Praeger. 1953. Pp. ix, 246. $3.95.)

A political and economic survey based largely on the author's travels. It attempts to deal with the political problems of the entire continent—a rather comprehensive task for such a brief volume.

The Economic Impact on Under-Developed Societies: Essays on International Investment and Social Change. BY S. HERBERT FRANKEL. (Cambridge: Harvard University Press. 1953. Pp. vii, 179. $3.25.)

A collection of essays by an Oxford professor on various colonial (largely African) economic problems. The central theme is the conflict between industrialism and the indigenous economies.

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POLITICAL THEORY, RESEARCH, AND METHODOLOGY

Les idées politiques en France sous la Restauration. By Dominique Bagge. (Paris: Les Presses Universitaires de France. 1952. Pp. xiv, 462. Fr. 1,500.)

This is an exceptionally good study of the political ideas of an unusually interesting period of French history.

Twenty-five years before, the centuries-old regime of France had been shaken, then wiped out. A new regime had grown among enthusiastic supporters, but at the price of terrible internal and international struggles. Bonaparte had tried to consolidate the social conquests of this new regime while returning to normalcy. He had been led to wars and had failed in his turn. Nothing had been spared of established ideas and the most firmly settled habits of thought.

This was a conjuncture most favorable to a proliferation of political ideas. In his study of the period, the author distinguishes three great streams of thoughts. The individualistic stream, issuing mainly from the Revolution, comprises the *libéraux* (Madame de Staël, Benjamin Constant), the *doctrinaires* (Royer-Collard, Guizot), the *Republicains* (Destutt de Tracy, Thiers, Courier, Béranger), and, to a certain extent, some *royalistes*, such as Chateaubriand. Opposite to it, the theocratic and counter-revolutionary school numbers such representatives as Joseph de Maistre, Bonald, and La Mennais. But a new idea grew out of the great whirlwind of ideas of this epoch and from the new conditions of life: socialism, advocated chiefly by Fourier, Saint-Simon, Enfantin, Bazard, and Auguste Comte.

The study of this period could not be made more fascinating than it is in this book. The brightness of the style, which strikes the reader from the very beginning, never leads to any sacrifice of the substance. The reasoning is always strong as well as sharp. Moreover, from the huge amount of documentation gathered through a thorough study of the books, newspapers, manifestos, and pamphlets published at the time, the author selected the most illustrative sentences or passages, thereby helping to make the text more attractive and more lively. The book, which has received considerable attention from French political scientists, deserves to be known in the United States.—André R. Tunc, *University of Grenoble.*

Politik als Wissenschaft. BY OSSIP K. FLECHTHEIM. (Berlin: Deutsche Hochschule für Politik. 1953. Pp. 42.)

Arousal of interest in political science in Germany has been one of the accomplishments of the American "re-education" efforts in that country. There are now a number of chairs at the regular universities, and several special "Schools of Politics," among them the Berlin *Hochschule fuer Politik* (successor to the only prewar German institution of this kind). What still worries German political scientists, however, is the problem of the "scientific" character of their new discipline. This problem is the object of a little study (only 42 pages in length but full of ideas) which has appeared in the new series of publications of the Berlin *Hochschule.* Its author discusses the following questions: What is the realm of the "political," and how can it be distinguished from the general field of social phenomena? Is politics art or science? What are the specific methods of political science? How far can it be value-free? To what extent can it predict events? In what is perhaps the most interesting section, the author takes up the problems of the sociological foundations of political science—problems which generally have been much neglected and yet are of great importance in a world where independent research is more and more threatened, and this not only in totalitarian sectors.—JOHN H. HERZ, *College of the City of New York.*

Political Science in Western Germany: Thoughts and Writings, 1950–1952. BY A. R. L. GURLAND. (Washington: Library of Congress, Reference Department, European Affairs Division. 1952. Pp. viii, 118. $1.00.)

A descriptive and analytical survey of West German books and articles relative to political science published in 1950–52. Arranged according to topics and includes a reference index of authors.

Das Studium der Politischen Wissenschaften im In- und Ausland. BY GÜNTER OLZOG. (Müchen: Isar Verlag. 1953. Pp. 156.)

A German scholar summarizes the present arrangements for study of political science in thirty-five nations.

Thorstein Veblen: A Critical Interpretation. BY DAVID RIESMAN. (New York: Charles Scribner's Sons. 1953. Pp. xiii, 221. $3.00.)

Writing in the chatty, personal-essay style with which his many readers are familiar, Riesman draws a fascinating portrait of an extraordinary personality. In so doing he emphasizes the inchoate and seemingly amorphous character of Veblen's exposition, thus leaving the reader in considerable doubt as to whether Veblen had anything to say that is of any great significance for the present generation.

The Economics of Sellers' Competition: Model Analysis of Sellers' Conduct. BY FRITZ MACHLUP. (Baltimore: The Johns Hopkins Press. 1953. Pp. xx, 582. $6.50.)

A simplified presentation of price theory with relatively little use of geometry and no use of algebra or calculus. Among the novel concepts developed are polypoly (many sellers) and pliopoly (new sellers in an old field, i.e., more sellers).

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FRANCIS G. WILSON

University of Illinois

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NEWS AND NOTES

PROFESSIONAL CONFERENCES

NEXT ANNUAL MEETING OF THE ASSOCIATION

The Fiftieth Annual Meeting of the American Political Science Association will be held September 9–11, 1954, at the Sherman Hotel in Chicago. The Chairman of the Program Committee is Professor Stephen K. Bailey, Wesleyan University; the Chairman of the Committee on Local Arrangements is Professor C. Herman Pritchett, University of Chicago.

The Fifty-Ninth National Conference on Government of the National Municipal League was held in Richmond, Virginia, November 8–11, and attracted 1033 registered visitors, as well as hundreds of high school and college students. An important aspect of the meeting was the method by which the Conference and its facilities were made available to all of Richmond's high schools, colleges, and universities. Seven school and college assemblies were arranged at which six leading Conference participants delivered addresses on the general topic "Youth in Civic Affairs." Among the speakers were George Gallup, Director of the American Institute of Public Opinion and new president of the National Municipal League; Charles Edison, former Governor of New Jersey; and Charles Coates, General Manager of the Citizens' Committee for the Hoover Report. More than 7,000 students were reached by these speakers.

Main speakers at the luncheon and dinner meetings of the Conference were Mr. Gallup and Mr. Edison, Frank C. Moore, former Lieutenant Governor of New York, Karl Detzer, Roving Editor of *Reader's Digest* and Spencer Miller, Jr., Assistant Secretary of Labor. More than 400 civic and business leaders, state and local officials, political scientists, and interested citizens attended the twenty-two panel sessions of the Conference. Among the topics discussed were: "Cities and the National Government," led by Sherwood Reeder, President of the Pennsylvania Economy League; "Consider the Whole City," Hugh Pomeroy, Planning Director of Westchester County, New York; "Effective Citizens' Associations," Mrs. Siegel W. Judd, Grand Rapids Citizens' Action; "Ethics for Legislators," Professor Belle Zeller, Brooklyn College; "Women as Campaigners," Margaret Hickey, Public Affairs Editor, *Ladies Home Journal;* "More Responsible States," Frank C. Moore, President, Government Affairs Foundation, Inc.; "The Newspaper as a Civic Force," Virginius Dabney, Editor, *Richmond Times-Dispatch;* and "Policymaking Machinery in the Council-Manager Plan," J. M. Kernochan, Columbia University.

Featured at the Conference was the presentation of twenty-two "cases," before a jury of twelve, by finalist cities in fifteen states competing for the 1953 "All-America Cities" awards. Half of those communities competing will be selected later in the year. The awards will be given on the basis of evidence presented before the jury of local proggress achieved as the result of citizen action. The contest is sponsored jointly by *Look Magazine* and the National Municipal League.

The Twenty-Fifth Annual Meeting of the Southern Political Science Association was held on November 5–7 at the University of Florida in Gainesville as a part of the centennial celebration of that institution. Approximately 160 persons were in attendance. Panel discussions were devoted to the following topics: "The First Nine Months of the Eisenhower Administration," "Problems of Suburbia," "Southern Politics—Effects of the 1952 Elections," "The Immigration and Nationality Act of 1952," "Recent Trends in Methodology in Political Science," "Problems in United States Foreign Policy," and "The Supreme Court and Segregation." The presidential address was delivered by Professor Charles B. Robson, and Dr. Hugh L. Elsbree, Managing Editor of the AMERICAN POLITICAL SCIENCE REVIEW, addressed the meeting briefly as representative of the American Political Science Association. Two other major addresses were delivered by Professors Francis W. Coker and John Gaus on the respective subjects, "Free Speech and the Silent Professor" and "The University, Political Science and the Public Service." Special recognition was accorded to the past presidents of the Association on this Twenty-Fifth Anniversary occasion, and Professor Cullen B. Gosnell of Emory University, first president of the Association, responded on behalf of the past presidents. The following officers were elected for the ensuing year: Professor Walter H. Bennett, University of Alabama, president; Professor John Hallowell, Duke University, vice-president; Professor Arthur B. Dugan, University of the South, recording secretary; Professor David R. Deener, Tulane University, Professor Robert K. Gooch, University of Virginia, and Dr. Robert E. Lowry, Tennessee Valley Authority, members of the executive council. Professor Lee S. Greene of the University of Tennessee was elected Editor of the *Journal of Politics* for the remaining two years of the unexpired term of Professor René de Visme Williamson who had resigned.

From August 29 to September 4, the Citizenship Clearing House sponsored three regional workshops in practical politics for a selected group of young teachers in political science who are interested in training for political participation. The New England session was held at Newtown, Connecticut, under the direction of Professor E. E. Schattschneider; the Midwest Workshop, at Michigan State College, East Lansing, under the direction of Professor James W. Miller; and the Pacific Northwest meeting, at the University of Washington, Seattle, under the direction of Professor Hugh Bone.

Designed to provide an informal course on practical politics, these workshops were limited to twenty-five young political scientists. The emphasis was on informality, and much of the discussion was conducted through panel sessions. The faculties of the workshops were composed of political leaders and more experienced political scientists, and in the three workshops more than thirty political leaders and ninety-four political scientists were involved.

Among the political leaders at the New England session were: John M. Bailey, Connecticut Democratic State Chairman; Professor Stephen K. Bailey, Mayor of Middletown, Connecticut; General Raymond Watt, former Assistant to Governor Lodge; Gus Tyler, Director of the Political Department, ILGWU. In the Midwest, political leaders included: Byron G. Allen, Minnesota Democratic National Committeeman; D. Hale Brake, State Treasurer of Michigan; Governor G. Mennen Williams; Mrs. Margaret Price, Michigan Democratic National Committeewoman; Bradshaw Mintener, Chairman, Minnesotans for Eisenhower; Owen J. Cleary, Michigan Secretary of State; John Feikens, Chairman, Michigan Republican State Committee, and Neil Staebler, Chairman, Michigan Democratic State Committee. Prominent at the Pacific Northwest Workshop were George C. Kinnear, Republican State Chairman; Ed Munro, Democratic State Committeeman; and Mr. and Mrs. Richard Neuberger, members of the Oregon Legislature.

The discussion at these workshops was oriented toward encouraging students to participate in, as well as to understand, our governmental institutions. The scope of the conferences can perhaps be best illustrated by the program of the Midwest Workshop, which included such topics as: the development of course techniques and materials for interesting students in practical politics, field work courses, the importance of the political party in the lawmaking process, interdisciplinary studies in political behavior, local political surveys, programs and projects to provide both academic and political experience for students, and the role of college administrators in encouraging political participation by young college men and women.

The Political Science Group of the University Center in Georgia held a dinner meeting on November 23, at Stone Mountain, Georgia. Present were political scientists from Emory University, Georgia Institute of Technology, Oglethorpe University, University of Georgia and the Atlanta Division, University of Georgia. Cullen B. Gosnell, chairman of the group, presided over the meeting. The topic of the program was "Techniques of Teaching the Introductory Course in Political Science." Participating on the panel which led the discussion were: Morris W. H. Collins, Jr., University of Georgia, who served as moderator; George Brasington, of Emory University; Samuel J. Mantel, Jr., of Georgia Tech.; Willard E. A. Range, of the University of Georgia; and Robert J. Steamer, of Oglethorpe University. Particular attention was given to newer techniques of instruction, viz., case method, role-playing, laboratory field research, and use of audio-visual aids.

The annual Mid-West Conference of Political Scientists will be held on the University of Iowa campus on April 29, 30 and May 1. Presiding at the sessions will be President Harry Voltmer of DePauw University. The chairman of the program committee for the year is Professor David Fellman of the University of Wisconsin.

Through an oversight, the minutes of the September 9, 1953 meeting of the Council of the American Political Science Association, published in the December, 1953 issue of the REVIEW, did not list the selections for the 1953 book awards, for which books published in 1952 were eligible.

The Woodrow Wilson Foundation Award for the best book in the field of government and democracy went to Clinton Rossiter's *Seedtime of the Republic;* the Franklin D. Roosevelt Foundation Award for the best book in the field of government and human welfare, to Mulford Q. Sibley and Philip E. Jacob's *Conscription of Conscience;* and the Freedom House, Willkie Memorial Building Award for the best book in the field of international relations, to F. S. C. Northrop's *The Taming of the Nations.*

OTHER ACTIVITIES

Methods of nominating presidential candidates in the United States will be the subject of scientific study by the Brookings Institution, it was announced jointly in October by Robert D. Calkins, President of the Institution, and Francis H. Lindley, President of the Haynes Foundation of Los Angeles, which has made a grant of $42,300 for the project. The investigation will be under the direction of Paul T. David, senior staff member of the Brookings Institution. The study will reexamine convention procedures. It will compare practices in states having presidential primaries for selecting delegates to national conventions with those using other methods. Also to be studied are the apportionment of voting strength among the states, instructed delegations, the unit rule, problems of communication among delegates and leaders during convention sessions, the pressures on the individual delegate, and similar topics. A special inquiry will be made into the voting behavior at the 1952 conventions to examine the conduct of delegations sent from state conventions as compared with that of delegations selected by state primaries.

The Brookings study is a sequel to the research now being completed by the American Political Science Association, scheduled for publication this spring under the title, *Presidential Nominating Politics in 1952.* This is a five-volume report prepared for the Association under the direction of Paul T. David, who was loaned by the Brookings Institution to the Association for the purpose.

A traveling seminar of professional persons to visit Yugoslavia, Greece, Turkey, Syria, Lebanon, Israel, Jordan, and Egypt is announced by the San Francisco State College for the coming summer. Under the direction of Dr. Alfred G. Fisk, professor of philosophy, the group will leave New York by air on June 29 with return scheduled for September 1. Visits will be made to governmental ministries, educational and social service institutions, and historic sites, and interviews with prominent persons will be held in all the countries visited. The group will travel on a cooperative, nonprofit basis. College credit is available but not required. Inquiries should be addressed to Dr. Alfred G. Fisk, San Francisco State College, San Francisco 27, California.

A new organization, The Population Council, Inc., has recently been established as a non-profit corporation to encourage research and education concerning the relationship of the world's population to its material and cultural resources. The Council plans to study the problems of the increasing population of the world, to support research, and to make known the results of such research. It will serve as a center for exchange of facts and information on population questions and cooperate with individuals and institutions having similar interests. The trustees of the Council are the Messrs. Frank G. Boudreau, Detlev W. Bronk, Karl T. Compton, Frank W. Notestein, Frederick Osborn, Dr. Thomas Parran, John D. Rockefeller, III, and Lewis L. Strauss.

The Council does not plan to conduct research or educational activities with its own staff. It has already made a small number of research grants to universities and other established organizations, and has established a number of fellowships for the training of students in the field of population. The purpose of the Council's fellowship program is to assist in the advanced training in the study of population of students in the social and natural sciences at the predoctoral or postdoctoral levels. The Council is planning to grant approximately six fellowships (for study in the United States and elsewhere) during the academic year 1954–55, to be divided between students from the United States and from other countries. Fellows will normally receive support for fulltime work for a period of about one year. The basic stipend at the rate of $2500 per year may be supplemented to provide for maintenance of dependents, and especially in the case of foreign students, for travel or exceptional expenses. It may be diminished to take account of lesser needs or partial support from other sources. Somewhat larger stipends may be granted to postdoctoral than to predoctoral fellows. Preference will be given to candidates who are not over forty years of age.

For information or application forms relating to this program, inquiries should be addressed to Mr. Frederick Osborn, Executive Vice-President of the Council, 230 Park Avenue, New York 17, New York.

A unit of the Citizenship Clearing House to function for the eastern half of Pennsylvania has been established at the University of Pennsylvania. The program for the current year includes a student conference in which political party leaders will participate; a series of dinner meetings to be held at several locations in eastern Pennsylvania for the purpose of mutual exploration of relationships between educational institutions and the organized political parties; a survey of current political activity of graduates who have majored in political science; and a workshop to bring together for purposes of practical education party functionaries and young instructors teaching in the field of government.

The *Deutsche Hochschule für Politik* at Berlin-Schoneberg has been awarded a two-year grant of DM 69,000 by the Rockefeller Foundation for the preparation of a series of outlines and source books in political science. These are intended primarily for the use of students in view of the fact that no such material is yet available in Germany. An editorial committee has been appointed, consisting of the Director of the School, Otto Suhr, Dr. Hans Reif, and Professor O. K. Flechtheim. Professor Flechtheim, who has been relieved of his teaching duties at the school for a period of two years, is to serve as managing editor. Most of the volumes will be written by members of the faculty of the *Hochschule*. They will be devoted to the German party system, foreign governments, political theory, international organization, and German government and administration.—OSSIP K. FLECHTHEIM.

The Carnegie Corporation, on September 24, 1953, approved a grant of $75,000 to the Inter-University Case Program for the three-year period ending in March, 1957. The Inter-University Case Program, a collaborative venture carried on by forty-five colleges and universities, has stimulated the development and use of case studies in policy formation and public administration. To date the Program has published forty-two case studies. Twenty-six of these appeared in a casebook, *Public Administration and Policy Development*, edited by Harold Stein.

For the seventh consecutive year, the Survey Research Center of the University of Michigan will hold its Annual Summer Institute in Survey Research Techniques. This special program is designed to illustrate the theory and application of survey research to such fields as business and human relations, education, psychology and sociology, political behavior, public affairs, public health, economics, statistics, etc. Again this year a special workshop will be offered in the practical application of survey research methods to these individual fields. The dates for the regular session are July 19 to August 13, with an introductory session from June 21 to July 16. Further information may be obtained from the Survey Research Center, University of Michigan, Ann Arbor, Michigan.

In November, the University of Georgia was granted approximately $4,000,000 to establish a comprehensive program in continuing education. The Kellogg Foundation granted the University some $2,000,000 and the remainder will come from state funds. An elaborate continuing education center will be constructed on the University campus at Athens, including a television station, extensive film-producing facilities, and hotel accommodations for some 400 persons. Morris W. H. Collins, Jr., assistant professor of political science and director of the Bureau of Public Administration, served on the four-man University research committee which helped prepare the proposal on which this grant was based. Plans for the program in continuing education envisage a greatly expanded program of training public officials by the Bureau of Public Administration of the University of Georgia.

Several members of the department of political science at the Pennsylvania State University are participating in an educational program for labor leaders from other countries of the world who are brought to the University by the U. S. Office of Education and the Foreign Operations Administration. Participants have been Professors Elton Atwater, Vernon Aspaturian, Wallace Brewster, John H. Ferguson, Nelson McGeary, and Neal Riemer.

Members of the department of political science at the University of California (Los Angeles) held two seminars in December, 1953. On these occasions the department was host to Thomas L. Stokes, distinguished journalist, and Murray Chotiner, campaign manager for Vice-President Richard M. Nixon.

Joseph E. Black, assistant professor of government at Miami University, has been appointed supervisor of the Foreign Study Program of Miami University Abroad. The academic portion of this summer travel program, which offers academic credit in political science, economics, and history, includes study at the London School of Economics and the Sorbonne.

Phillips Bradley, of Syracuse University, will accompany a class from the University on a six-weeks' tour of American government during the coming summer. Two weeks each will be spent in Albany, New York, New York City, and Washington, conferring with officials and studying special problems of the federal system.

Arnold Brecht, professor of political science, jurisprudence, and public finance on the Graduate Faculty, New School for Social Research, will become professor emeritus in March, 1954. He has accepted an invitation from the University of Heidelberg, Germany, to lecture on political science as a guest professor from May through July, but plans to return to the United States in September.

John J. Corson, manager of the Washington office of McKinsey and Company, managements consultants, and former Director of the U. S. Employment Service, opened the 1953–54 series of "Lectures in Administration" given at the Cornell University School of Business and Public Administration. Dr. Corson spoke on November 10, 1953, on the "Use of Logic in Administration." Other scheduled lecturers are Charles P. Taft, attorney; Hubertus J. van Mook, of the United Nations' Technical Assistance Administration; Robert Moses, Park Commissioner of New York City; Eugene Holman, President of the Standard Oil Company of New Jersey; and Victor Emanuel, Chairman and President of the Avco Manufacturing Corporation.

Professor Marshall Dimock has assumed his duties as Head of United Nations Mission in Ankara, Turkey. He is Co-Director of the Institute of Public Administration for Turkey and the Middle East and is also Acting Resident Representative of the United Nations Technical Assistance Board. During the first three months of 1954 he took leave to participate as a staff member in the Administrative Staff College, Henley-on-Thames. Professor Dimock will return to the United States at the end of the summer, 1954.

Professor Henry W. Ehrmann of the University of Colorado has been appointed a member of the National Selection Committee for Fulbright Awards for the current year. He returned recently from France where he prepared a study on French management organizations.

Two members of the American Political Science Association, Professor Russell H. Fitzgibbon of the University of California at Los Angeles and Professor Harry Kantor of the University of Florida, were the guests of the Costa Rican government at the ceremonies held in connection with the inauguration of the new president of Costa Rica, Jose Figueres. Professors Fitzgibbon and Kantor were *invitados especiales*. Over 600 diplomatic representatives and outstanding men of letters, scholarship, business, and other fields from all over the world attended the ceremonies.

Professor B. Mirkine-Guetzévitch has resumed his duties as Dean of the Faculty of Law and Political Science of the French *Ecole Libre des Hautes Etudes* in New York. He has recently returned from Paris where he served as a professor in the Institute of Advanced International Studies at the University of Paris, and in the *Ecole Nationale d'Adminis-*

tration. He has also resumed the publication of the collection, *La Vie Juridique des Peuples*, of which he is the editor. Professor Mirkine-Guetzévitch was elected Vice-President of the New International Institute of Political Philosophy recently established at the Sorbonne.

Saul K. Padover, professor of political science on the Graduate Faculty, New School for Social Research, spent the fall of 1953 on a lecture tour of Southeast Asia. He lectured before universities, colleges, and civic groups in India, Rangoon, Mandalay, Bangkok, Kuala Lumpur, Penang, Saigon, and Hongkong. His topics included the American federal structure, the United States Supreme Court, the American concept of democracy, minorities, and the capitalist system. Professor Padover resumed his work at the New School in December.

Norman D. Palmer, professor of political science at the University of Pennsylvania, delivered lectures on "Indian Attitudes toward the United States" at a meeting of the World Affairs Council of Philadelphia on October 7, and at the Ursinus College Forum on November 11.

Leo C. Riethmayer, chairman of the department of political science at the University of Colorado, was elected in November to a six-year term on the Boulder City Council. For the past year he has served as Vice-Chairman of the Boulder County Planning Commission.

E. E. Schattschneider, of Wesleyan University, will serve as visiting scholar at the University of Georgia, Emory University, and Agnes Scott College during the first week of March, 1954. Professor Schattschneider's visit is being sponsored by the University Center in Georgia.

Leo Strauss, professor of philosophy at the University of Chicago, gave a series of Walgreen Foundation lectures at that institution during November on the subject "Machiavelli and Machiavellianism."

FACILITIES OF THE OFFICE OF PUBLIC AFFAIRS, DEPARTMENT OF STATE, AVAILABLE TO UNIVERSITIES AND COLLEGES

The Department of State is interested in cooperating with universities and colleges in their efforts to meet the need for widespread understanding of foreign policy problems. Among the services which the Department, through the Public Services Division, is prepared to offer in response to requests are: arranging for Department of State officers to speak to student, faculty, or community groups throughout the country, when it is possible for them to do so; holding policy briefings in the Department of State for interested groups; providing films and other visual media; issuing special background materials, other than Department of State publications, to meet particular needs.

The Department has cooperated with universities and colleges in holding two or three day regional conferences for the adult public from surrounding areas. These conferences have been devoted to a single foreign policy problem, or to a more general consideration of foreign policy. The Department has, on request, assisted with the planning, supplied relevant Department of State publications, and provided speakers. The Department welcomes the opportunity to discuss problems with the public and to learn the views of interested citizens. The conferences have been an exceptionally successful method of encouraging a two-way flow of information. Inquiries should be addressed to the Public Services Division, Department of State, Washington 25, D. C.

Many university and college libraries are on the Department's mailing list for publications and periodicals. In addition, nineteen regional distribution centers have been established throughout the country from which Department of State publications may be obtained. They are: (1) World Affairs Council of Northern California, 421 Powell Street, San Francisco 2, California; (2) University of Denver, Social Science Foundation, Denver 10, Colorado; (3) Chicago Council on Foreign Relations, 116 S. Michigan Avenue, Chicago 3, Illinois; (4) Thomas F. Cunningham Reference Library, International House, Gravier and Camp Streets, New Orleans 12, Louisiana; (5) Minnesota World Affairs Center, University of Minnesota, Minneapolis 14, Minnesota; (6) United Council on World Affairs, 355-A Boylston Street, Boston 16, Massachusetts; (7) Woodrow Wilson Foundation, 45 East Sixty-fifth Street, New York 21, New York; (8) Southeastern Association for Adult Education, University of North Carolina, Chapel Hill, North Carolina; (9) Council on World Affairs, 922 Society for Savings Building, Cleveland 14, Ohio; (10) University of Utah Library, Salt Lake City, Utah; (11) American Association for the United Nations, 909 Fourth Avenue, Seattle 4, Washington; (12)

International Center, University of Louisville, Louisville 8, Kentucky; (13) Institute of International Affairs, 1620 S.W. Park Avenue, Portland 1, Oregon; (14) Buffalo Council on World Affairs, Inc., 921 Genesee Building, Buffalo 2, New York; (15) Woodrow Wilson School of Foreign Affairs, University of Virginia, Charlottesville, Virginia; (16) World Affairs Council of Philadelphia, 3rd Floor Gallery, John Wanamaker Store, Thirteenth and Market Streets, Philadelphia 7, Pennsylvania; (17) Dallas Council on World Affairs, 2419 Maple Avenue, Dallas, Texas; (18) St. Louis Council on World Affairs, Inc., 511 Locust Street, St. Louis 1, Missouri; (19) American Association for the United Nations, Ambassador Hotel, Los Angeles, California.

Faculty members may request that their names be put on the mailing list of the Public Services Division for single copies of Department of State publications. Larger quantities may be ordered from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Subscriptions to the weekly Department of State *Bulletin* ($7.50 a year, single copies twenty cents), the bi-weekly *Foreign Policy Briefs* ($1.00 a year, single copies five cents), and the bi-monthly *Field Reporter* ($1.50 a year, single copies thirty cents), and orders for catalogues of State Department publications may also be placed with the Government Printing Office.

The Public Services Division as the division of the Department of State most actively engaged in working with the public will be glad to consider any requests which universities and colleges may send them for these services, and to work with them to serve their particular needs.—RICHARD FRIEDMAN, Chief, Organization Liaison Branch, Public Services Division.

APPOINTMENTS AND STAFF CHANGES

Willard F. Barber, formerly Deputy Assistant Secretary of State for Latin American Affairs, recently transferred from the U. S. Embassy at Lima, Peru, where he was Counselor, to the U. S. Embassy at Bogotá, Colombia, where he is serving as Chargé d'Affaires.

Paul Beckett has resumed his position as associate professor of public administration at the State College of Washington after a two-year leave of absence. While on leave, Professor Beckett was responsible for setting up and directing a new Department of Public Administration as part of a technical assistance program sponsored by the U. S. Technical Cooperation Administration at the American University of Beirut, Beirut, Lebanon.

Guthrie S. Birkhead returned to the faculty of the department of political science, Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University, after one year's leave as the first staff fellow of the National Municipal League.

Donald C. Blaisdell is visiting professor of political science for the academic year 1953–54 at the University of Florida. He has returned to the United States from a Department of State assignment in Geneva, Switzerland, where he was representative to international organizations with headquarters in Geneva.

Anthony T. Bouscaren left the University of San Francisco in July, 1953, to become Director of the Institute of Soviet and Communist Studies in Winnetka, Illinois. He lectured in the fall semester at Loyola University, and has accepted an appointment as chairman of the department of political science at Marquette University beginning February 1, 1954.

Donald W. Brandon, who was recently a fellow and teaching assistant at the University of California (Berkeley), has been appointed instructor in political science at the University of San Francisco.

John E. Burton, Vice-President—Business of Cornell University and Chairman of the New York State Power Authority, has been appointed a lecturer in public administration at the Cornell University School of Business and Public Administration.

Fred V. Cahill, Jr., recently on military leave from Yale University where he was assistant professor of political science, has been appointed professor of government at the University of Massachusetts. During his tour of military duty Professor Cahill was assigned to the Office of the Assistant Chief of Staff, G-2, Intelligence, Department of the Army.

Werner J. Cahnman, formerly with the Evaluation Staff of the Voice of America, has been appointed adviser to the Italian-American Student Exchange Program of the Institute of International Education.

Francis M. Carney, graduate student at the University of California (Los Angeles), has accepted an appointment as instructor in political science at the University of California (Riverside), effective in February, 1954.

Asher N. Christensen, of the University of Minnesota, is serving as a member of the faculty of the Salzburg Seminar in American Studies for the January session.

George A. Codding, Jr., who completed his graduate work at the University of Geneva (The Graduate Institute of International Studies) in 1952, has been appointed a lecturer in the department of political science at the University of Pennsylvania.

James S. Coleman accepted an appointment as instructor in political science at the University of California (Los Angeles), effective in September, 1953.

Thomas I. Cook is serving as acting chairman of the department of political science at the Johns Hopkins University during the current academic year.

David Cooperman has been appointed teaching intern in the department of political science at the University of Minnesota under a grant from the Fund for the Advancement of Education.

Morton H. Couden, formerly of the City College of New York, is serving as an instructor in the department of political science at Washington University on a one-year appointment.

Claude B. Cross, who received his Ph.D. degree in political science from the State University of Iowa in August, 1953, has been appointed to the political science faculty of the State College of Washington.

Melvin G. de Chazeau, of the Cornell University School of Business and Public Administration, has been named a consultant to the President's Council of Economic Advisers in Washington.

Ithiel de Sola Pool, of the Massachusetts Institute of Technology, has been appointed visiting lecturer in political science at Yale University.

Karl W. Deutsch resumed his duties as professor of history and political science at the Massachusetts Institute of Technology after a year's leave of absence spent with the Center for Research on World Political Institutions at Princeton University.

Andreas Dorpalen, recipient of grants from the Guggenheim Foundation and the Institute for Advanced Study, is on leave of absence from St. Lawrence University during 1953–54.

Eugene Dvorin, graduate student at the University of California (Los Angeles), spent three months in Africa studying the new federation of Northern Rhodesia, Southern Rhodesia, and Nyasaland.

William Ebenstein, professor of politics at Princeton University, is on leave during the spring term to do research under a Ford Faculty Fellowship.

Lewis J. Edinger, formerly of the Woman's College of the University of North Carolina, has been appointed to an assistant professorship at the Air University, Maxwell Field, Alabama.

Willard H. Elsbree, assistant professor of government at Ohio University, was a member of the United States Delegation to the sixteenth session of the Economic and Social Council which met this past summer in Geneva, Switzerland.

Donald Farmer has been appointed teaching intern in the department of political science at the University of Minnesota under a grant from the Fund for the Advancement of Education.

John H. Ferguson, professor of political science at the Pennsylvania State University, is serving as Director of the Social Science Research Center at that institution. He is scheduled half-time in the department and half-time with the Research Center.

Leroy Ferguson, associate professor of social science and political science at Michigan State College, is on sabbatical leave during 1953–54 and is working with the Survey Research Center at the University of Michigan.

Jason Finkle, formerly a research assistant at the University of Michigan, has been appointed instructor in the department of political science at the University of Florida.

Julian Foster, a former tutor in New College, Oxford University, is presently serving half-time as a visiting lecturer in political science at the University of Michigan.

Robert S. Friedman, who completed requirements for the Ph.D. degree at the University of Illinois last summer, has accepted an appointment as research assistant in the Bureau of Governmental Research, University of Maryland.

Manuel R. García-Mora, assistant professor of political science at the University of Detroit, has been appointed vice-chairman of the department of political science at that institution.

Charles Gilbert, who has been making a case study of the legislative behavior of a United States Senator under a grant from the Social Science Research Council, spent the fall term on the staff of the department of political science at Swarthmore College.

Gilbert F. Gilchrist has been granted a renewal of his General Education Board Fellowship to continue his studies at the Johns Hopkins University.

William Goodman has been promoted to associate professor of political science at the University of Tennessee.

Luther G. Hagard, Jr., who was recently a member of the faculty at The Citadel, has accepted an appointment as assistant professor of government at West Texas State College.

Royal G. Hall is a visiting professor at Stetson University during 1953–54.

Philip S. Haring, formerly of the faculty of the School of Public Relations and Communications, Boston University, is teaching at Northwestern University during the current academic year.

Frederick H. Hartmann is on leave from the University of Florida for the academic year 1953–54 on a Fulbright award. He is spending the year at the University of Bonn, Germany, on research.

William C. Havard has been appointed assistant professor of political science at the University of Florida, succeeding Hugh Marshall who has accepted an appointment at Stanford University. In addition to teaching, Professor Havard will participate in the program of the University of Florida Public Administration Clearing Service.

Paul M. Herzog, formerly Chairman of the National Labor Relations Board, has been appointed Associate Dean of the Harvard Graduate School of Public Administration. Mr. Herzog is making a survey, financed by a three-year grant from the Carnegie Corporation, of programs of training for the public service.

Duane W. Hill, who received his Ph.D. degree in political science from the State University of Iowa in August, 1953, has been appointed to the staff of Bradley University.

Ralph T. Jans has been appointed lecturer in political science and research associate in the Institute of Public Administration at the University of Michigan for 1953–54.

Henry L. Janssen, recently of the University of California (Santa Barbara Campus), has been appointed assistant professor of political science at San Diego State College.

Claudius O. Johnson resumed his duties at the State College of Washington on February 1 after a year's leave of absence during which time he served as a Fulbright lecturer at the Universities of Sydney and Melbourne in Australia.

Donald Bruce Johnson, of the University of Iowa, was promoted to assistant professor of political science, effective July 1, 1953.

Evans C. Johnson has accepted an appointment as assistant professor on the faculty of Stetson University.

Ned V. Joy, formerly of Princeton University, has joined the political science faculty of San Diego State College as an assistant professor.

Thomas E. Joyner, recently of Champlain College, has accepted an appointment as acting associate professor of political science at the University of Tennessee.

John H. Kautsky, formerly of the Office of Intelligence Research, Department of State, joined the Center for International Studies, Massachusetts Institute of Technology, as a research associate last August.

Jarold A. Kieffer, who has recently been serving as Assistant to the Executive Officer, Office of Defense Mobilization, has been appointed Assistant to Commissioner Arthur S. Flemming, a member of the new Hoover Commission.

Robert S. Lancaster has been promoted to an associate professorship in political science at the University of the South.

John W. Lederle, of the University of Michigan, has taken leave of absence as director of the Institute of Public Administration and has been appointed by Governor G. Mennen Williams as Controller, Michigan Department of Administration.

Edward H. Litchfield, Dean of the Cornell University School of Business and Public Administration, is serving as a consultant to the Commission on Intergovernmental Relations, in connection with the Commission's research concerning all federal programs that involve expenditures of funds in cooperation with state and local governments.

John Logue, who is pursuing his doctorate at the University of Chicago, has been appointed instructor of political science at the University of Notre Dame.

Lewis C. Mainzer has been appointed instructor in government at the University of Massachusetts. For the past two years Mr. Mainzer has been engaged in research in Washington, D. C., on research policy formation in the Department of Agriculture.

Gerard J. Mangone has been promoted to the rank of associate professor of political science at Swarthmore College. During the summer he was in charge of political orientation aboard student ships for the Council of Student Travel.

Dean E. McHenry, professor of political science at the University of California (Los Angeles), has received a Fulbright appointment to teach at the University of Western Australia in Perth and to do research on Australian politics at Canberra. Professor McHenry will be on sabbatical leave from U.C.L.A. in 1954.

William McIntosh has been advanced to an associate professorship in political science and head of the department of political science at Tennessee Agricultural and Industrial State University, Nashville, Tennessee. He was granted the Ph.D. degree from the University of Minnesota in June, 1953.

Frederick C. Mosher, of Syracuse University, has been appointed Editor of the *Public Administration Review*.

Rita W. Nealon, of New York University, has been advanced to the rank of associate professor and has been appointed Director of the Citizenship Clearing House for Southern New York.

Charles R. Nixon, associate professor of political science at the University of California (Los Angeles), has received a one-year appointment at the University of Natal in Durbin, Union of South Africa. Financed by a grant from the Carnegie Corporation, Professor Nixon will assist in the formation of a program of advanced training in social science research which has been inaugurated by the Union's national council for social research. During 1954, Mr. Nixon will be on a special leave from U.C.L.A.

Marbury Bladen Ogle has been named head of the reorganized department of history, government and philosophy at Purdue University.

Gene Overstreet, instructor of political science at Michigan State College, is on leave during 1953–54 to study Indian political parties under a Ford grant.

Frank P. Piskor has been advanced to the rank of associate professor in the department of political science, Maxwell School of Citizenship and Public Affairs, Syracuse University.

Otto C. Press is serving as a teaching intern in political science at the University of Minnesota during 1953–54 under a special grant from the Fund for the Advancement of Education.

Henry Reiff, chairman of the department of history and government at St. Lawrence University, is on leave of absence this year to teach at Ibrahim University, Cairo, Egypt, under the Fulbright program.

Bennett M. Rich, visiting associate professor of political science at the University of Michigan, has been appointed acting director of the Institute of Public Administration.

Nelson M. Robinson, formerly assistant professor of political science at Albright College, has been appointed assistant professor of political science and acting associate director of the Bureau of Public Administration at the University of Tennessee.

Lester G. Seligman has resigned his position at the University of Chicago to accept an assistant professorship in the department of political science at the University of Oregon, where he will participate in the social science honors program and teach in the field of American political behavior.

Ruth C. Silva, assistant professor of political science at the Pennsylvania State University, has returned from a year's leave of absence as a Fulbright exchange professor at the University of Cairo, Egypt.

Theodore H. Skinner has been appointed Acting Director of Evening Studies at Washington Square College, New York University, for the academic year 1953–54. He is replacing Professor Morley Ayearst who is doing research at the University College of the West Indies on a Fulbright award.

Bruce Lannes Smith, until recently associate professor of political science in the Foreign Service Institute, Department of State, is now an associate professor of political science at Michigan State College. He continues to serve as the American editor of *International Political Science Abstracts.*

David G. Smith has accepted an appointment as instructor in the department of political science at Swarthmore College.

Albert Somit has been appointed Director of the Falk Research Program in Political Participation at New York University. He replaces Professor Ray F. Harvey who is now serving as Director of the new Office of the Budget at the University.

Frank Sorauf, who received the Ph.D. degree at the University of Wisconsin in 1953, was appointed in September as instructor of political science at the Pennsylvania State University.

Robert B. Stauffer has been promoted to an assistant professorship in the department of government at the University of Hawaii.

Kenneth W. Thompson, associate professor of political science at Northwestern University, is on leave for the year 1953–54 to serve as adviser in international relations to the Rockefeller Foundation.

Tang Tsou is serving as a lecturer in political science at the University of Utah during the winter and spring quarters.

Robert W. Tucker has been appointed assistant professor of political science at the Johns Hopkins University. He assumed his new duties at the beginning of the second semester.

Hubertus J. van Mook, Director of Public Administration, Technical Assistance Administration, United Nations, has been appointed a visiting professor of comparative public administration at the Cornell University School of Business and Public Administration during 1953–54.

IN MEMORIAM

Oliver Peter Field died suddenly at his home in Bloomington, Indiana, of a heart attack on October 22, 1953, at the age of fifty-six.

He was born of Norwegian ancestry in Fergus Falls, Minnesota, October 21, 1897. He acquired an interest in people and public discussion in the forum of his father's grocery store and at the age of fourteen contributed to the success of his father's mayoralty campaign by writing speeches. His bent for extracting the most from circumstances was shown by his practice of keeping live fish in a tub from which he could supply, at a price, such fishermen as were reluctant to return home empty-handed. Poor vision, precarious health, delay in learning English until he started school, and the necessity of working his way through college were obstacles which he successfully overcame.

After receiving the Bachelor's degree from St. Olaf College in 1919 and the Master's from the University of Minnesota in 1924, Oliver Field came to Indiana University in the latter year as an instructor in political science, advancing to assistant professor in 1926. He received in 1927 the Bachelor of Laws degree from the Indiana University School of Law. A Sterling Fellowship enabled him to study in the Yale Law School, where he earned the degree of Doctor of Jurisprudence in 1928. He then joined the faculty of the University of Minnesota, where, except for a year as lecturer in government at Harvard University, he was a member of the department of political science, serving as full professor from 1931 to 1939. He returned to the government department at Indiana University in the fall of 1939, where he served as acting chairman during the two years preceding his death.

Early in his career Professor Field's capacity for scholarship was demonstrated; the last of his many writings appeared only shortly before his death. His first book was a collaborative text in state government. The second was also a text, the widely used *Cases and Authorities on Constitutional Law*. These were followed by a monograph, *The Effect of an Unconstitutional Statute*. He then turned to the developing field of administrative law and there established another reputation, his chief work among several smaller monographs and many articles being *Civil Service Law in the United States*. In later years, Professor Field's interests included the broader aspects of political science. He found that the study of Utopias afforded a unique insight into political motivation. He was also engaged in an examination of the literature of various cultures concerning the training of the King. Although these inquiries were far advanced, the responsibilities of the departmental chairmanship had intervened to preclude further progress.

Professor Field's attainments in public law and political science were early recognized by the American Political Science Association. He participated frequently in its programs and his counsel was often sought on its policies. He served the Association in an official capacity on the Board of Editors, as a member of the Executive Council, and as a Vice-President.

Oliver Field entertained a warm sentiment for Indiana University and for the Bloomington community, a feeling which found a willing and hearty response among his wide circle of friends on the campus and in the town. Two of his writings are devoted to the University. One is an account of political science at Indiana University from 1829 to 1951 and the other, still to be published, a history of Indiana University during World War II. These writings he regarded as the tribute of an alumnus to his alma mater.

Oliver Field's personality was one of many facets. It is not alone his keen insight into the ways of men, his understanding of the society about him, or the high distinction accorded to him by his profession for which he will be remembered. It is these things and more: his kindly spirit, his wise counsel, his confidence in the common man, his patient uncomplaining endurance of handicap, his contagious zeal for learning, his unconquerable optimism. All of these things together make him memorable to those who were privileged to know him.—Edward H. Buehrig and John E. Stoner.

Hans Leonhardt, professor of political science at Michigan State College, died in Chicago, Illinois, on September 11, 1953, at the age of fifty-two. He had been in ill health for the last two years of his life and was finishing a sabbatical leave from Michigan State College, having returned from Europe a few weeks prior to his death.

A native of Dusseldorf, Germany, Professor Leonhardt had been for many years a maritime lawyer in the former Free City of Danzig. After the advent of the Nazi regime in Germany he acted as legal advisor to the opposition parties in Danzig, negotiating frequently on their behalf between 1934 and 1937 with the High Commissioner of the League of Nations. Following the Nazi successes in Danzig, Professor Leonhardt came to the United States in 1938.

Dr. Leonhardt was educated in Germany at the Universities of Freiberg, Munich, and Berlin. He was a former judge in Dusseldorf and Elberfeld. After coming to the United States he entered the graduate school of the University of Chicago. His doctoral thesis, initiated under the direction of Quincy Wright, was later published under the title *The Nazi Conquest of Danzig*.

Professor Leonhardt came to Michigan State College in 1942 as an instructor. By 1949 he had advanced to the rank of professor. In recognition of his previous legal experience and his many services to the Michigan community he was given an honorary membership in the Ingham County (Michigan) Bar. His crowded classes, his reputation as a brilliant interpreter of international politics earned by his frequent off-campus lectures, and his contributions to professional journals attest to his artistry as a stimulating teacher and to his reputation as a public servant and scholar. But perhaps his colleagues at Michigan State will best remember him for his integrity and his courageous resistance to attacks upon the dignity of the individual.—Carroll Hawkins.

SALE OF REPRINTS OF REVIEW ARTICLES

As previously announced, reprints of articles appearing in current issues of the Review will no longer be obtainable at the Washington Office. As in the past, authors will be supplied with a substantial number of copies of reprints. In order to dispose of reprints on hand, the Washington Office is offering copies of any of these reprints at ten cents each. The following titles are available:

September, 1953

La Palombara, "The Italian Elections and the Problem of Representation"
Frischknecht, "The Democratization of Administration: The Farmer Committee System"
Davis, "Reflections of a Law Professor on Instruction and Research in Public Administration"
Thompson, "Collective Security Re-examined"
Cassinelli, "The Law of Oligarchy"
Davey, "The Legislative Council Movement in the United States, 1933–1953"
Laves, "Increasing the Number of Americans Potentially Available for Foreign Assignments"
Hastings, "The Independent Voter in 1952: A Study of Pittsfield, Massachusetts"
Rourke, "Doctoral Dissertations in Political Science in American Universities"
Overacker, "Publications on Australia Useful to a Political Scientist"

June, 1953

Pritchett, "Libertarian Motivations on the Vinson Court"
Lipson, "The Two-Party System in British Politics"
Campbell, Gurin, and Miller, "Political Issues and the Vote: November, 1952"
Holcombe, "An American View of European Union"
Egger, "Nature Over Art: No More Local Finance"
Ostrom, "State Administration of Natural Resources in the West"
Scammon, "British By-Elections, 1952"
Khadduri, "The Role of the Military in Middle East Politics"
Wright, "Agrarian Syndicalism in Postwar France"

March, 1953

Leich, "The Hoover Commission's Personnel Recommendations"
Miller, "Party Preference and Attitudes"
Bosworth, "The Politics of Management Improvement in the States"
Coker, "Some Present-Day Critics of Liberalism"
Leiserson, "Notes on the Theory of Public Opinion Formation"
Cook and Moos, "The American Idea of International Interest"
Adams and Barile, "The Implementation of the Italian Constitution"
Fellman, "Constitutional Law in 1951–1952"
Dull, "The Japanese General Election of 1952"

December, 1952

Deener, "Judicial Review in Modern Constitutional Systems"
Pollock, "The Electoral System of the Federal Republic of Germany"
Duverger, "Public Opinion and Political Parties in France"
MacRae, "The Relations Between Roll Call Votes and Constituencies in the Massachusetts House of Representatives"
Hocking, "Problems of World Order"
Hartz, "The Whig Tradition in America and Europe"
Kort, "The Issue of a Science of Politics in Utilitarian Thought"
SSRC Interuniversity Summer Seminar, "Research in Political Behavior"

September, 1952

Leibholz, "The Federal Constitutional Court in Germany and the Southwest Case"
Pennock, "Responsiveness, Responsibility and Majority Rule"
Adrian, "Some General Characteristics of Nonpartisan Elections"
Eldersveld, "The Independent Vote"
Appleby, "Roosevelt's Third-Term Decision"
Davies, "Some Relations between Events and Attitudes"
Kohn, "Pan-Slavism and World War II"
Catlin, "Contemporary British Political Thought"
Miller, "A Selective Survey of Literature on Mongolia"

June, 1952

Dimock, Rossiter et al, "Goals for Political Science: A Discussion"
Kort, "The Qualifications of Aristotle's Theory of Revolution"
Pierce, "France Reopens the Constitutional Debate"
Steiner, "Recent Literature on Chinese Communist Party History"
Nicholas, "British General Election of 1951"
Milne, "Britain's Economic Planning Machinery"
Huitt, "Federal Regulation of the Uses of Natural Gas"
Carroll, "Recent German Publications and German Foreign Policy"
Cook and Moos, "Foreign Policy: The Realism of Idealism"
Hawley and Dexter, "Recent Political Science Research in American Universities"
Kallenbach, "Constitutional Limitations on Re-eligibility of National and State Chief Executives"
Latham, "The Group Basis of Politics"

March, 1952

Snider, "American County Government"
Fellman, "Constitutional Law in 1950–1951"
Mason, "American Individualism: Fact and Fiction"
Evans, "The Colombia-Peruvian Asylum Case"
Tucker, "Professor Morgenthau's Theory of Political 'Realism' "
Frenkel-Brunswik, "Interaction of Psychological and Sociological Factors in Political Behavior"
Ehrmann, "The French Peasant and Communism"

December, 1951

Fesler, Hartz, et al., "Goals for Political Science: A Discussion"
Kammerer, "Record of Congress in Committee Staffing"
Epstein, "British Labor Left and U. S. Foreign Policy"
Feely, "Analysis of Administrative Purpose"
Rice and Kappel, "Strategic Intelligence and Publication of Statistics"
Dishman, "Public Interest in Emergency Labor Disputes"
Bone, "New Party Associations in the West"
Hall, "An Open Letter Proposing a School of Cultural Legal Studies"
Pennock, "Political Science and Political Philosophy"
Odegard, "Variations on a Familiar Theme"
Kenyon, "Where Paine Went Wrong"

In the list of panel papers on pages 1237–38 of the December, 1953 issue of the Review, incorrect titles were given for two papers. The correct titles are as follows:

Sherman, Harvey, "United States Technical Assistance in Public Administration."
Tickner, F. J., "The United Nations Programme of Technical Assistance in Public Administration."

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